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Appendix A

United States Court of Appeals
For the First Circuit

No. 09-2569

FIDEICOMISO DE LA TIERRA DEL CANO MARTIN PENA,

Plaintiff, Appellant,

v.

LUIS G. FORTUNO, in his official capacity as Governor of the Commonwealth of Puerto Rico; ANTONIO M. SAGARDIA-DE JESUS, in his official capacity as Secretary of Justice of the Commonwealth of Puerto Rico; MUNICIPALITY OF SAN JUAN; JORGE SANTINI in his official capacity as the Mayor of the Municipality of San Juan; AUTORIDAD DE ENERGIA ELECTRICA; AUTORIDAD DE CARRETERAS; and ADMINISTRACION DE TERRENOS,

Defendants, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Francisco A. Besosa,
U.S. District Judge]

Before

Lynch, *Chief Judge*,
Torruella and Lipez, *Circuit Judges*.

Judith Berkan, with whom *Mary Jo Méndez*, *Berkan/Méndez*, *Pedro J. Saade*, and the *Clinica de Asistencia Legal Escuela de Derecho, Universidad de Puerto Rico*, were on brief for appellant.

Eliezer Aldarondo-Ortiz, with whom *Eliezer A. Aldarondo-López*, *Aldarondo & López Bras*, *Guillermo Somoza-Colombani*, Attorney General, *Mercado & Soto Law Offices*, *Maymi, Rivera & Rotger, P.S.C.*, *Anqel Rotger Sabat*, and *Francisco J. Amundaray* were on brief for appellees.

April 28, 2010

LYNCH, ***Chief Judge***. Plaintiff, Fideicomiso de la Tierra del Caño Martin Peña (Land Trust of the Martin Peña Canal, hereinafter "Fideicomiso"), an entity created by legislation, brings an unusual Takings Clause claim. The Fideicomiso does not attack the exercise of government condemnation or eminent domain powers. Rather, the challenge is to Law 32, a legislative amendment to an earlier statute enacted in 2004. That earlier statute is Law

489, which the Fideicomiso correctly admits serves a number of public purposes and which created the Fideicomiso. Law 489 was implemented by, inter alia, transferring to the Fideicomiso title to certain lands that had originally belonged to public agencies of the Commonwealth of Puerto Rico and the Municipality of San Juan when Law 489 was enacted. Law 32 revoked the Fideicomiso's title to those lands and returned title to those Commonwealth and municipal public agencies.

The essence of the Fideicomiso's claim is that if it is stripped of title to these lands and public agencies are reinvested with title, those agencies cannot be trusted to carry out the public purposes embodied in Law 489. The Fideicomiso styles this as a claim that the transfer of lands back to public agencies does not meet the "public use" requirement of the Takings Clause.

We order dismissal of the complaint.

In 2004, Puerto Rico enacted Law 489, the Martin Peña Canal Special Planning District Integrated Development Act. *See* P.R. Laws Ann. tit. 23, § 5031-5066. Law 489's stated public purpose is "to give priority attention to the environmental restoration of the Martin Peña Canal and to rehabilitate and revitalize the communities along its north and south banks" and to thereby "promote a healthy relationship between the natural environment and its surrounding city and communities, with a vision of integrated

development based on community empowerment." *Id.* § 5032.

The more specific purposes of the Martin Peña Canal ENLACE (LIAISON) Project, as embodied in Law 489, include:

> *Environmental.* To enable the rehabilitation of the San Juan Bay Estuary, improve the quality of its waters and the habitat of its fauna and wildlife by broadening and dredging of the Martin Peña Canal and a conservation strip along both banks thereof.
>
> *Socio-economic.* To improve the living conditions of the approximately thirty thousand (30,000) residents of the eight communities located along both sides of the Canal in the areas of public sanitation, housing, ordinance and quality of the urban spaces and the infrastructure.

Id. These stated purposes make it clear that one of the explicit intentions of the Martin Peña ENLACE Project is to remove conditions harmful to the public. Another explicit intention of the project is "to foster an integrated community development spearheaded by the members of the communities themselves." *Id.*

To implement these policy goals, Law 489 created two entities, the Martin Peña ENLACE Project Corporation ("Corporation"), *id.* § 5033, and

the Fideicomiso, *id.* § 5048. The Fideicomiso, as a land trust, was charged with administering and developing certain lands in the canal area for the benefit of the communities there. *Id.* One of its key goals was "[t]o contribute toward the solution of the ownership rights problem of many District residents through collective land-holding." *Id.*

The Corporation's mandate made it "responsible for coordinating the implementation of all aspects of the ENLACE Project; including . . . housing development, infrastructure, the dredging and canalization of the Canal, as well as urban and socioeconomic development," and "[t]o guarantee mechanisms for citizen participation in the planning and execution of the ENLACE Project and promote community empowerment." *See id.* § 5033.

Toward those ends, Law 489 provided that title to any lands in the canal area owned by the Commonwealth of Puerto Rico and the Municipality of San Juan would automatically transfer to the Corporation 160 days after the act became effective. *Id.* § 5045.[1] The Corporation would then transfer these lands to the Fideicomiso after regulations governing the Fideicomiso's operations were established. *Id.* §§ 5046, 5048. Those regulations were promulgated on October 21, 2008. *See* General

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[1] There was an exception for a maritime terrestrial zone, *id.* § 5045. Further, the Department of Housing was directed to do title searches and, where appropriate, to provide registration of ownership rights to residents of the area within one year. *Id.* § 5047.

Regulations for the Operation of the Caño Martin Peña Land Trust (hereinafter "Land Trust Regulations"). The land transfer to the Fideicomiso was completed with a formal deed on May 14, 2009, nearly five years after Law 489 was enacted.

One month later, on June 18, 2009, Puerto Rico enacted Law 32, a law which retroactively revoked only article 16 of Law 489, the article which had provided for the transfer of lands from the Commonwealth and Municipality to the Corporation and ultimately to the Fideicomiso. *See* Act of June 23, 2009, No. 32. Under Law 32, title to those lands was to revert back to the Commonwealth and Municipality immediately. *Id.* art. 1. Law 32's stated purpose was "[t]o amend Article 16 of Act No. 489 . . . to make viable that its provisions be harmonized with other laws, and to clarify that public domain lands are not transferrable." *Id.* pmbl. Most pertinent to this case are these provisions:

> Should the Corporation or the Fideicomiso, by virtue of the Act, have attempted to or have registered any Municipal property to its name, the same is by the present revoked and without effect and the title will immediately revert to the Municipality of San Juan.
>
> The properties of the Commonwealth of Puerto Rico will be studied and evaluated by its title holding

> dependencies to determine if these remain titled to the agency....
>
> Any of these properties which have been transferred to the Corporation or Fideicomiso will revert to the original Agency or Titleholder in order to follow the legal process previously mentioned.

Id. art. 1. The only lands the Corporation transferred to the Fideicomiso came from the public agencies of the Commonwealth and Municipality. Accordingly, the provision as to the reversion to the original titleholder is inapplicable. Law 32 does provide that public agencies may, under certain conditions, transfer title to lands in the canal district to the Corporation. *Id.*

Two days after Law 32's enactment, the Fideicomiso brought a civil rights suit in the federal district court of Puerto Rico against various entities and officials of the Commonwealth and the Municipality. The Fideicomiso primarily seeks to invalidate Law 32 under the Takings Clause, though it also makes claims under the Due Process Clause, the Contracts Clause, and the Ex Post Facto Clause of the United States Constitution.[2] Implementation of Law 32 has been stayed by this court in order to maintain the status quo while the constitutional issues are addressed.

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[2] The Fideicomiso also challenges Law 32 under the parallel due process and takings clauses of the Puerto Rican constitution.

The Takings Clause of the Fifth Amendment applies to the states and to Puerto Rico through the Fourteenth Amendment. *See Tenoco Oil Co., Inc.* v. *Dep't of Consumer Affairs*, 876 F.2d 1013, 1017 n. 9 (1st Cir. 1989). The Takings Clause sets two conditions on the government's constitutional authority to take private property: the government may take private property for "public use," but it must provide just compensation when it does so. U.S. Const. amend. V.

The Fideicomiso says that Puerto Rico lacks authority to retake title to property recently transferred to the Fideicomiso, and that the federal courts should enjoin defendants from implementing Law 32 to do so, because any taking would not be for "public use."[3] It does not seek just compensation.

I. Facts

The events leading up to Law 32's enactment are undisputed.

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[3] The district court did not reach the merits of this claim because it declined to exercise jurisdiction over the Fideicomiso's claims under the abstention doctrine of *R.R. Comm'n of Tex.* v. *Pullman*, 312 U.S. 496 (1941). *See Fideicomiso de la Tierra del Caño Martin Peña* v. *Fortuño*, 670 F. Supp. 2d 132, 140-42 (D.P.R. 2009). It reasoned that whether the Fideicomiso owned "private property" subject to the Takings Clause turned on difficult and unsettled questions of Puerto Rican law best left to the Puerto Rican courts. *Id.* at 137-40. Our approach is to ask questions preceding the ones on which that court focused.

For centuries, water from the San Jose Lagoon emptied into the ocean by way of the Martin Peña Canal, a shallow, narrow, three-mile-long channel surrounded by mangrove swamps that runs through the heart of the city of San Juan.

Until the mid-twentieth century, the area around the canal was unsettled and undeveloped. The Great Depression hit Puerto Rico's agricultural economy especially hard, and Hurricanes San Felipe and San Ciprian, two of the worst in Puerto Rican history, destroyed agricultural production and left hundreds of thousands of people homeless. *See* Carlos Marquez, What If? Puerto Rico's Economy: It's a Matter of Status, P.R. Herald, Aug. 5, 2004. Migrants fled ravaged rural communities for San Juan, and there, lacking the resources for anything else, they began settling the swampland around the Martin Peña Canal.

Generations of Puerto Ricans have since migrated from the countryside to the city, and the canal area is now home to some 30,000 residents in eight distinct communities spanning hundreds of acres. *See* P.R. Laws Ann. tit. 23, § 5032. Residents have made the swampland habitable by sinking dirt, garbage, and debris into the swampland until it became firm enough to support the makeshift homes they built from salvaged wood and corrugated tin. There are no paved roads and few basic utilities. Sewage has flowed directly into the canal or into improvised septic systems.

These communities fall well below the poverty line. Many residents are the backbone of San Juan's skilled labor force, and their purchases sustain many of the city's small businesses. These are, as the Puerto Rican legislature has recognized, "communities of irreplaceable importance for the city." Act of September 24, 2004, No. 489, Statement of Motives.

The canal area is, however, also in a state of environmental crisis that has threatened the whole San Juan Bay Estuary system. The wetlands have become dry land. The canal, once some four hundred feet wide at points, has shrunk so much that it no longer serves as the vital link between the San Jose Lagoon and San Juan Bay. Instead, water from the Lagoon floods the settlements, dredging up raw sewage and eighty years' worth of detritus, sweeping away the ground beneath the homes, and imperiling residents.

By 2001, the Commonwealth and the U.S. Army Corps of Engineers, recognizing the severity of this problem, had committed to a far-reaching project to dredge the canal, restore the flow of water, and clean up decades of environmental pollution. Because the lack of sewage systems has been a major source of pollution, as well as a major health hazard, the government has also committed to rehabilitating and revitalizing the canal and its communities as a central aspect of this project. The government estimates that the project will take at least twenty years to complete.

This project has the potential to transform the canal and its surrounding land, and community residents have a strong stake in shaping its direction. Dredging the canal means relocating those canal residents located closest to the water; rehabilitating and revitalizing the area also means that it will be more attractive to commercial developers. Sensitive to these concerns, a central purpose of the rehabilitation project, designated the Martin Peña ENLACE Project, is to ensure the long-term survival of canal communities.

While the Commonwealth has repeatedly assured residents that forced relocation is not an option, the project has nonetheless generated pressing questions about land ownership in the canal area. Various public agencies of the Commonwealth and Municipality had some claim to title on several hundred acres of this land. Other parcels of land were abandoned when settlers arrived, and some have been abandoned since. The contours of the land have changed as the canal receded. Settlers have, in any event, occupied the lands surrounding the canal indiscriminately, in some cases for many decades, further complicating questions of land ownership. In the past, the Commonwealth and the Municipality experimented with different processes for recognizing residents' titles to land they have long occupied. But many of these processes may not have complied with basic property registration requirements under Puerto Rican law, leaving many residents uncertain about whether they own the land upon which they live.

In practice as well as in name, the ENLACE Project has relied on community engagement to develop solutions to these difficult questions. Beginning in 2001, residents, under the auspices of the Commonwealth's Department of Transportation and Public Works and the Highways and Transportation Authority, started developing a land-use plan tailored to residents' social, economic, and environmental needs. Three years and several hundred community meetings later, participants agreed on a community land trust model to solve the ownership question and to manage the lands in the canal area for the community at large.[4]

On September 24, 2004, Puerto Rico enacted Law 489, which spelled out how the environmental rehabilitation of the canal and the preservation and revitalization of its surrounding communities would be implemented. The law adopted the model of "integrated development based on community empowerment" as "the public policy of the Commonwealth of Puerto Rico." P.R. Laws Ann. tit.

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[4] Community land trusts (CLTs) have long been championed as a solution to the problem of affordable housing in urban communities. See J.J. Kelly Jr., Land Trusts that Conserve Communities, 59 DePaul L. Rev. 69, 70-71 (2009). CLTs are usually nonprofit, democratically run organizations of community members that own land in the area and hold it in trust for the community's benefit, while selling or leasing the homes built upon the land at low cost. *Id.* Because the trust cannot generally sell the underlying land and can usually place conditions on the sale of homes on the land, both of which are true here, the CLT model aims to rehabilitate urban communities while deterring land speculation and gentrification by private developers. *Id.* at 79-84.

23, § 5032. Law 489 again committed the government to minimizing residents' dislocation as the rehabilitation of the canal proceeded. *See id.* It also created two entities, the Corporation and the Fideicomiso, which were charged with implementing particular aspects of these broader goals. *Id.* §§ 5033, 5048.

The Corporation was charged with coordinating and implementing all aspects of the dredging of the canal, housing development, and urban planning in the canal area, and was to ensure active and constant participation by canal residents. *Id.* § 5033. As part of that process, article 16 of Law 489 mandated that title to any lands in the canal area owned or managed by public agencies of the Commonwealth or Municipality would automatically pass to the Corporation 160 days after Law 489 took effect. *Id.* § 5045. Article 17 further provided that once the Commonwealth determined which lands around the canal were part of the maritime-terrestrial zone and in the public domain, the remaining lands would be "declared patrimony of the Commonwealth under the ownership rights of the Corporation," and title would formally transfer to the Corporation. *Id.* § 5046.

The Fideicomiso, as a land trust, was to be created from the lands the Corporation received from public agencies under article 16 and the public patrimony lands the Corporation held under article 17. *Id.* § 5048. The transfer of these lands from the Corporation to the Fideicomiso was to occur once the Corporation prepared regulations to govern the

Fideicomiso's operations. *Id.* The Fideicomiso's purposes, under Law 489, included "contribut[ing] toward the solution of the ownership rights problem of many District residents through collective landholding," *id.* § 5048(a) (1), and "acquir[ing] and possess[ing] lands on behalf of the community, thus increasing local control over the land and avoiding absentee owner decision-making," *id.*. § 5048(a) (4).

Regulations governing the Fideicomiso's operations were promulgated in 2008. They again stressed the Fideicomiso's role as a "mechanism of collective possession in order to solve the problem of the lack of ownership titles" and to "avoid involuntary displacement" of canal residents. Land Trust Regulations art. I, § 1. They further emphasized the Fideicomiso's mission "to own, watch over and administer all lands that the Corporation transfers to it" and any future land it acquires, a mission that precluded the Fideicomiso from selling these lands. *Id.* art. III, § 3.2. The land transfer proceeded, and on May 14, 2009, the Corporation formally deeded the public lands it had received to the Fideicomiso.

One month later, on June 18, 2009, the Puerto Rican government--now under the leadership of a different political party--enacted Law 32. Law 32 retroactively amended article 16 of Law 489 so that title to any properties held by the Corporation or the Fideicomiso that had been transferred by the Commonwealth or Municipality would revert back to them. Act of June 23, 2009, No. 32, art. 1. Law 32, by its terms, left intact most of the rest of Law 489,

including its statement of goals and section 5048, the section that created the Fideicomiso. *See id.*

Law 32 does not place any conditions on what the Municipality can do with these lands, though the rest of Law 489, which sets out a comprehensive plan for the future of the canal area, remains in effect. *See id* Under Law 32, Commonwealth agencies that originally held lands in the canal area are to study the status of the titles and determine whether the agency should retain the lands or should instead transfer them. *Id.* Agencies can transfer the land so long as the transfer would not impede citizens' access to essential services. *Id*

When Law 32 was enacted, the Fideicomiso had claimed title to approximately two hundred acres of land, all of which had originally been held by the Commonwealth or Municipality and had been transferred from the Corporation to the Fideicomiso. At present, these are lands where canal residents live and have built themselves homes.

After initial skirmishes over whether the Fideicomiso could get a temporary restraining order or preliminary injunction to stop Law 32 from taking effect, on November 10, 2009, the district court issued an opinion in which it declined to reach the question of preliminary injunctive relief. Instead, it dismissed the case and abstained under the *Pullman* abstention doctrine.[5] *See Fideicomiso de la Tierra*

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[5] Under *Pullman* abstention, federal courts ordinarily stay the federal action instead of dismissing it. *Mangual* v. *Rotger-*

del Caño Martin Peña v. *Fortuño*, 670 F. Supp. 2d 132, 141-42 (D.P.R. 2009). The Fideicomiso now appeals.

II. Jurisdiction

We first address some basics. Article III limits our jurisdiction to "cases and controversies," and our "obligation to inquire *sua sponte* into our jurisdiction over the matter" exists in every case. *Doyle* v. *Huntress, Inc.*, 419 F.3d 3, 6 (1st Cir. 2005).

That obligation extends to determining whether a party has constitutional standing to sue, meaning that it has suffered an injury in fact "causally connected to the challenged conduct" and capable of being remedied through suit. *Pagán* v. *Calderón*, 448 F.3d 16, 27 (1st Cir. 2006) (citing *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Though the defendants have asserted that the Fideicomiso never legally owned the lands transferred to it by the Corporation, that argument does not deprive the Fideicomiso of Article III standing. We need not define the precise nature of the Fideicomiso's interests in these lands to hold that they are sufficient to establish an injury in fact if Law 32 is enforced. Law 32 is directed explicitly at the Fideicomiso and creates an injury in fact by its very terms, which state that any Commonwealth and

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Sabat, 317 F.3d 45, 63 (1st Cir. 2003). We do not need to reach the issue of whether the failure to stay was error.

municipal lands transferred to the Fideicomiso will immediately return to it. Act of June 23, 2009, No. 32, art. 1. Article III standing is no bar to our exercise of jurisdiction in this case.

To the extent that the question of ripeness presents Article III limitations on our jurisdiction, there is no such jurisdictional hurdle on the theory pled here. It is true that *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City,* 473 U.S. 172 (1985), held a plaintiff's claim for just compensation under the Takings Clause was unripe where the plaintiff had not gone through state procedures for obtaining compensation. *Id.* at 195. But there is no just compensation claim here.

We agree with the vast majority of circuits to address this issue, which have held that this ripeness requirement of going through state procedures does not apply to claims that a taking was not for a "public use." *See Carole Media LLC* v. *N.J. Transit Corp.*, 550 F.3d 302, 308 (3d Cir. 2008); *Rumber* v. *Dist. of Columbia,* 487 F.3d 941, 944 (D.C. Cir. 2007); *Montgomery* v. *Carter County,* 226 F.3d 758, 766-68 (6th Cir. 2000); *McKenzie* v. *City of White Hall,* 112 F.3d 313, 317 (8th Cir. 1997); *Armendariz* v. *Penman,* 75 F.3d 1311, 1320-21 & n.5 (9th Cir. 1996) (en banc), *abrogated on other grounds by Lingle* v. *Chevron U.S.A., Inc.,* 544 U.S. 528 (2005); *Samaad* v. *City of Dallas,* 940 F.2d 925, 936-37 (5th Cir. 1991); but *see Forseth* v. *Vill. of Sussex,* 199 F.3d 363, 369 N.8, 372-73 (7th Cir. 2000). That is so because "[p]rivate-use takings .are

unconstitutional regardless of whether just compensation is paid," and, unlike just compensation claims, state proceedings to determine appropriate compensation would not obviate the constitutional question. *Montgomery,* 226 F.3d at 766-67.

Nor is this a case where the federal courts should decline to exercise jurisdiction under the discretionary doctrine of *Pullman* abstention. *Pullman* abstention avoids unnecessary federal court interference by deferring to state courts on important, unsettled areas of state law; however, it is appropriate only when "substantial uncertainty exists over the meaning of the state law in question, and . . . settling the question of state law will or may well obviate the need to resolve a significant federal constitutional question." *Batterman* v. *Leahy,* 544 F.3d 370, 373 (1st Cir. 2008). The latter condition is not satisfied here.

The Fideicomiso's Takings Clause claim does not turn on questions of Puerto Rican law, including questions of whether the Corporation could legally transfer public agencies' lands to the Fideicomiso, whether the Fideicomiso is a public or private entity,[6] its powers as a trust, or whether the lands in

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[6] On appeal, the parties focus on this issue as central to whether the Fideicomiso could state a claim under the Takings Clause, on the theory that there can be no taking if the Fideicomiso had no cognizable property rights. The Fourth Circuit has instead characterized whether a plaintiff is a public entity capable of suing the state for an alleged constitutional violation as an Eleventh Amendment issue because of the stakes for the state's sovereign dignitary interests. *See*

question are considered private property, all of which are bitterly contested. *See Fideicomiso,* 670 F. Supp. 2d at 137-40.

The gravamen of the Fideicomiso's Takings Clause claim is that it is entitled to stop the alleged taking entirely, as opposed to receiving just compensation, because Law 32 is not a taking for "public use." Irrespective of whether the Fideicomiso is, as it claims, a private owner of lands considered private property under Puerto Rican law, it cannot

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Virginia v. *Reinhard,* 568 F.3d 110, 122-23 (4th Cir. 2009). We need not engage in an Eleventh Amendment analysis. Other circuits have classified this question yet differently under the rubric of standing, *see, e.g., id.* at 123 n.3 (collecting cases), though the reasoning in some cases has not invoked Article III considerations. *Id.*

Whatever the formal label, this is not the kind of jurisdictional issue we must address first under *Steel Company* v. *Citizens for a Better Environment,* 523 U.S. 83 (1998). *See Davignon* v. *Clemmey,* 322 F.3d 1, 11 (1st Cir. 2003) (interpreting *Steel Company* as holding that difficult jurisdictional questions need only be addressed before the merits if they implicate Article III's "case or controversy" requirement). Instead, this is the kind of thorny question we have avoided when, as here, another issue is dispositive. *See Parella* v. *Ret. Bd of the R.I. Employees' Ret. Sys.,* 173 F.3d 46, 56 n.6, 58-62 (1st Cir. 1999) (avoiding deciding whether the defendant was an "arm of the state" for Eleventh Amendment purposes because plaintiffs' Takings and other constitutional claims failed on the merits).

We do not reach this issue, and for this reason, we also do not address the Seventh Circuit's opinion in *Illinois Clean Energy Community Foundation* v. *Filan,* 392 F.3d 934 (7th Cir. 2004), which held that a foundation created by statute was not a state agency and could bring a Takings Clause claim against the state. *Id.* at 936-37.

obtain the relief it seeks if its "public use" argument fails. Unlike the ancillary questions identified by the district court, this is a question of federal constitutional law. *See Kelo* v. *City of New London,* 545 U.S. 469, 479-83 (2005). Because the Fideicomiso cannot prevail on its argument that Law 32 is not for "public use," as discussed below, abstention is unwarranted.

III. The Takings Clause "Public Use" Claim

The public use requirement of the Takings Clause mandates that "one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid." *Thompson* v. *Consol. Gas Utils.Corp.,* 300 U.S. 55, 80 (1937). Under those circumstances, a "plaintiff that proves that a government entity has taken its property for a private, not a public, use is entitled to an injunction against the unconstitutional taking, not simply compensation." *Carole Media,* 550 F.3d at 308; *see also Ramirez de Arellano* v. *Weinberger,* 745 F.2d 1500, 1521-22 (D.C. Cir. 1984), *rev'd on other grounds sub nom, Weinberger* v. *Ramirez de Arellano,* 741 U.S. 113 (1985). Plaintiff's claim falls under this public use branch of the doctrine.

The Fideicomiso says that the alleged "taking" under Law 32 is not for "public use" because it serves no legitimate purpose and undercuts the purposes of Law 489. It argues that the government has failed to consistently identify any legitimate goal for Law 32. Even if the government had, the Fideicomiso further

argues, Law 32's alleged confiscation and transfer of lands to public agencies bears no reasonable relationship to any possible legitimate purpose. This is so not least because Law 32, in the Fideicomiso's view, relieves public agencies from the obligation to advance the goals of the ENLACE Project identified in Law 489. These goals in Law 489 are indisputably public purposes.[7] The end result of Law 32, the Fideicomiso warns, will be to end community participation in the ENLACE Project, to allow public agencies to facilitate speculation by private developers, and to displace community residents.

These are serious arguments, but they are not grounds for a claim under the Takings Clause of the U. S. Constitution. Public policy disagreements about the best of several rational means to accomplish legitimate public purposes are not the grist of a Takings Clause claim. Our review of whether a taking is for "public use" is necessarily deferential: "When the legislature's purpose is legitimate and its means are not irrational, empirical debates over the wisdom of takings. . . are not to be carried out in the federal courts." *Haw. Housing Auth.* v. *Midkiff*, 467 U.S. 229, 242-43 (1984); *see also Goldstein* v. *Pataki*, 516 F.3d 50, 57-58 (2d Cir. 2008).

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[7] The fact that under Law 489 the land may, after improvements, be leased to private parties does not mean that Law 489 lacks a public purpose, *see Berman* v. *Parker*, 348 U.S. 26, 33-36 (1954), nor does the Fideicomiso so argue.

Well before the *Kelo* decision, the Supreme Court had recognized two categories of quintessentially legitimate public uses under the Takings Clause: takings that transfer private property to public ownership, resulting in the administration of lands for the public good, *see, e.g., Old Dominion Land Co.* v. *United States,* 269 U.S. 55, 66 (1925); *United States* v. *Gettysburg Elec. Ry. Co.,* 160 U.S. 668, 681-83 (1896); *Shoemaker* v. *United States,* 147 U.S. 282, 297 (1893), and takings that make property available for use by the general public, *see Kelo,* 545 U.S. at 478-79 (noting that this category has long been deemed "sufficient to satisfy the public use requirement"). These two categories, of course, continue to be legitimate public uses under *Kelo.*

Law 32, by its terms, revokes the transfer of public agencies' lands to the Fideicomiso and returns the lands to public ownership through agencies of the Commonwealth and the Municipality.[8] This transfer to public ownership reflects the Commonwealth's judgment that the goals of rehabilitating and revitalizing the canal will be better served, and will be consistent with other missions of its public agencies, if these agencies, rather than the Fideicomiso and the Corporation, again hold and administer the lands in the canal area they once owned. There can be no doubt that Law 32's transfer

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[8] Thus the category of cases in which the property is transferred to another private party, *see, e.g., Kelo*, 545 U.S. at 478-83; *Midkiff*, 467 U.S. at 241-42; *Berman*, 348 U.S. at 33-36, is not involved here.

to public ownership is for "public use" under the Takings Clause.[9]

The Fideicomiso's argument is largely that it disagrees with the different choice of mechanisms made in Law 32, as opposed to those originally made in Law 489, to effectuate public purposes. The tensions the Fideicomiso identifies between Law 32 and Law 489 do not make Law 32's transfer of lands to public agencies an irrational or even a suspect means of achieving public purposes. Law 32 itself says its purpose is to harmonize Law 489 with other laws and to clarify that public domain lands are not transferrable. The government has argued that through Law 32, experienced public agencies will regain ownership of lands in the canal, and this will facilitate better and faster completion of projects to advance the area's revitalization and development. The government argues that five years have passed under the Fideicomiso land trust model and there has been no real progress towards meeting Law 489's environmental rehabilitation and development goals. All of this, the government concludes, justifies a different approach. Whatever the wisdom of this choice of different means by the legislature and governor, a federal court cannot conclude Law 32 was an illegitimate means of advancing a public purpose, not least because transfers of private

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[9] At oral argument, the government represented that those public agencies must, under Law 32, continue to administer the lands for the benefit of canal residents and for all the other stated public purposes originally articulated in Law 489.

property to public ownership have been upheld since the founding of our country.

There are no other circumstances presented by this case that would warrant the remedies of injunctive and declaratory relief for the Fideicomiso's Takings Clause claim. The Fideicomiso says if Law 32 goes into effect, the Fideicomiso will be prevented from carrying out its statutory purpose; that may be true. It does not follow, as the Fideicomiso argues, that the communities surrounding the canal will be dislocated as a result. "Irreparable harm" in the takings context cannot simply mean the risk that the means the government has chosen to implement a public policy will have undesirable consequences.[10] The Takings Clause is not a means for federal courts to second-guess the legislature's choices about the

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[10] Though the Supreme Court has granted declaratory and injunctive relief for a limited number of Takings Clause claims beyond "public use" challenges, it has also made clear that these cases are exceptional and limited to their facts. Those cases, moreover, involved regulatory takings, not physical takings. *See E. Enterprises* v. *Apfel*, 524 U.S. 498, 521-22, 528-537 (1998) (plurality opinion) (granting declaratory and injunctive relief for a regulatory takings claim on the facts of a Tucker Act case where the alleged taking resulted in severe, retroactive, and unforeseeable liability for a small number of parties and the Claims Court process would not provide a sufficient remedy); *Babbitt* v. *Youpee*, 519 U.S. 234, 237, 243-45 (1997) (invalidating and enjoining further enforcement of a federal statutory provision that effectively eliminated certain Native American landowners' ability to leave fractional interests in property to their successors); *Irving* v. *Hodel*, 481 U.S 704,716-18 (1987) (invalidating and enjoining an earlier version of this provision).

best mechanisms to achieve what are undeniably public policy goals.

IV. Other Constitutional Claims

In its complaint, the Fideicomiso cursorily challenged Law 32's constitutionality under the Due Process Clause, the Contracts Clause, and the Ex Post Facto Clause. But the Fideicomiso did not develop these arguments before the district court, nor has it preserved them for appeal. The Fideicomiso's motion for a preliminary injunction centered entirely on the merits of its Takings Clause claim. It mentioned its other claims only in passing, omitting both case citations and any indication of the gravamen of these claims. The Fideicomiso's brief on appeal likewise relies solely on its Takings Clause claim to argue the merits of its case. That is waiver; we do not reach these other claims. *See Mass. Museum of Contemporary Art Found.* v. *Büchel,* 593 F.3d 38, 65 (1st Cir. 2010).

We *vacate* the district court's judgment and the stay we entered, and we direct entry of judgment of dismissal with prejudice of all federal claims and dismissal of all claims under Puerto Rican law without prejudice. No costs are awarded.

So ordered.

-Concurring Opinion Follows-

TORRUELLA, ***Circuit Judge*** (Concurring). I join the majority in holding that Plaintiff-Appellant,

Fideicomiso del Caño Martin Peña ("the Fideicomiso"), cannot show that Law 32 fails to pursue a "public use" as required by the Fifth Amendment's public use clause.[11] I write separately to clarify my view that Law 32 pursues the public purposes of economic, social, environmental, and community redevelopment that were carefully plotted in Law 489. Under settled Supreme Court precedent, -- including the latest decision in *Kelo* v. *City of New London*, 545 U.S. 469 (2005) -- economic and community redevelopment are legitimate public purposes. Viewing Law 32 within the statutory and regulatory framework adopted by Law 489, it is manifest that Law 32 pursues these public goals through public ownership of lands. Eschewing any views regarding the wisdom of transferring lands to public ownership in order to effectuate the goals of the ENLACE Project, I cannot say that Law 32 lacks a public purpose.

I.

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[11] The Takings Clause of the Fifth Amendment applies to the states through the Fourteenth Amendment. *Lingle* v. *Chevron U.S.A. Inc.*, 544 U.S. 528, 536 (2005). Though the Supreme Court has not held that the Takings Clause of the Fifth Amendment is applicable to the Commonwealth of Puerto Rico, we have dispelled any "doubts" regarding the application of the clause to the Commonwealth of Puerto Rico. *Tenoco Oil Co., Inc.* v. *Dep't of Consumer Affairs*, 876 F.2d 1013, 1017 n.9 (1st Cir. 1989); *see also Culebras Enter. Corp.* v. *Rivera Rios*, 813 F.2d 506 (1st Cir. 1987) (assuming, in the context of an inverse condemnation action under Puerto Rico law, that the Takings Clause applies to the Commonwealth of Puerto Rico).

In 2001, the Commonwealth of Puerto Rico ("the Commonwealth") developed a comprehensive development project denominated the Martin Peña Canal ENLACE Project (the "ENLACE Project") under the direction of the Department of Transportation and Public Works. The project's stated purpose was to rehabilitate and revitalize the Martin Peña Canal District. The ENLACE Project came to fruition on September 24, 2004 when the Commonwealth's legislature promulgated Law 489, also known as "the Martin Peña Canal Special Planning District Integrated Development Act." P.R. Laws Ann. tit. 23, §§ 5031-5066. Among other things, Law 489 articulated clear public policy goals: (1) to rehabilitate the San Juan Bay Estuary; (2) to improve the living conditions of the communities located along the Martin Peña Canal through community empowerment; and (3) "t[o] promote civic and democratic development through the active participation of the residents in the planning and rehabilitation processes of the area." *Id.* § 5032. Law 489 established two basic entities to pursue these goals: the ENLACE corporation and the Fideicomiso, or Land Trust.

The ENLACE Corporation was endowed with the responsibility of "coordinating the implementation of all aspects of the ENLACE Project; including, without being limited to, housing development, infrastructure, the dredging and canalization of the Canal, as well as urban and socio-economic development." *Id.* § 5033(1). In turn, the Fideicomiso was created to, inter alia, deal with land

ownership issues; acquire and possess lands on behalf of the community; handle the displacement of the low-income residents; guarantee affordable housing; and foster "participation of the residents and the strategic investment of the private sector." *Id.* § 5048 (a) (5).

By virtue of Law 489, all publicly-held lands within the District were transferred to the ENLACE Corporation. *Id.* § 5045. ("The public agencies. . . that manage, hold in custody, have dominion over, lease or own lands in the District shall be understood through this chapter as having transferred the respective title to the Corporation after one hundred sixty days (160) as of the effectiveness thereof."). Ownership rights over "lands of public domain or patrimony" remained "vested" in the ENLACE Corporation, with certain exceptions regarding lands in the maritime-terrestrial zone. *Id.* Ultimately, these lands were to be transferred from the Corporation to the Fideicomiso. *Id.* § 5048 ("The Martin Peña Canal Land Trust shall consist of all the lands transferred to the Corporation.").

In May 2007, the Integral Development and Land Use Plan of the Special Planning District of the Caño Martin Peña was approved by the Governor of Puerto Rico. The Plan sought to "improve the quality of life of the residents of the District through mechanisms aimed at overcoming poverty, [and] harmonizing the relationship between the District's communities and their natural environment . . . " Appellant's Appendix, Vol. III, Exhibit E at 1432.

On June 18, 2009, the Commonwealth's legislature passed Law 32 "to amend Article 16 of Law No. 489 of September 24, 2004." [12] Law 32 provides, inter alia, that "any of the[ ] properties which have been transferred to the Corporation or [the] Fideicomiso, will revert to the original Agency or Title Holder," and "[a]ny lot or parcel of land which by virtue of Law 489 has been registered in the name of the Corporation or the Fideicomiso, will revert to its original titleholder condition until such time as every study, action or procedure has been accomplished in accordance with this Act." Law 32 also revoked any transfers of Municipal lands to the Fideicomiso or the ENLACE Corporation, and invalidated any efforts by the Fideicomiso or the ENLACE Corporation to register Municipal lands in their names.

After the Governor of Puerto Rico signed Law 32, the Fideicomiso filed the present suit challenging Law 32 under the Takings and Due Process clauses of the 5th and 14th Amendments to the United States Constitution and equivalent provisions of the Puerto Rico Constitution. The Fideicomiso stresses that the Government has failed to articulate a coherent and legitimate explanation of the public purposes behind Law 32. The Fideicomiso also contends that in allowing the Commonwealth to place land titles among a host of public agencies, Law 32 contravenes Law 489's goals to foster

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[12] As previously mentioned, Article 16 of Law 489 provided for the transfer of lands in the Martin Peña Canal District to the ENLACE Corporation.

community participation, and avoid speculation and displacement of the communities. On the other hand, the Commonwealth argues that governmental control over the lands would jump-start the ENLACE Project which was delayed for close to five years due to what the government claims was the Fideicomiso's inability to complete the different stages of the ENLACE Project in a timely fashion. The Commonwealth further explains that Law 32 creates a mechanism to allow public agencies to participate in the ENLACE Project.

II.

The Fideicomiso, as "a party challenging governmental action as an unconstitutional taking[,] bears a substantial burden" in this case. *E. Enter.* v. *Apfel,* 524 U.S. 498, 523 (1998). Supreme Court precedent requires this court to defer to legislative judgments of what constitutes a public use or purpose. *See Kelo,* 545 U.S. at 480 ("Without exception, our cases have defined that concept [public purpose] broadly, reflecting our longstanding policy of deference to legislative judgments in this field.") *Hawaii Hous. Auth.* v. *Midkiff,* 467 U.S. 229, 240 (1984). Once a public use is established, we owe deference to the legislative judgment regarding the means chosen to attain it. *Berman* v. *Parker,* 348 U.S. 26, 33 (1954) ("Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine."); *Old Dominion Land Co.* v. *United States,* 269 U.S. 55, 66 (1925) (holding that once Congress declared a public

use, "[i]ts decision is entitled to deference until it is shown to involve an impossibility").

However, deference to the legislature in the takings context does not mean abdication of the court's duty to find that there is indeed a public purpose being served. Despite the Fideicomiso's better efforts to show that Law 32 lacks any public use or purpose, a review of Law 32 reveals that in passing the statute, the Commonwealth's legislature simply chose different means to achieve the goals and undoubtedly public purposes that were carefully delineated in Law 489. Also, as the majority opinion recognizes, Law 32 transferred lands to public ownership, thereby meeting an undoubtedly public purpose.

It is of utmost importance to clarify that Law 32 amended *one Article of Law 489* -- Article 16 -- and maintained Law 489's comprehensive provisions that define the policy goals behind the ENLACE Project. As the Commonwealth argues, the principles, purposes, and objectives of Law 489 are in effect. In enacting Law 32, the Commonwealth's legislature simply chose alternate means to achieve the development and rehabilitation goals set forth in Law 489. Absent any indication that Law 32 amounts to an unreasonable or irrational avenue to undertake the ENLACE Project, we cannot second-guess the legislature in this case. *Midkiff*, 467 U.S. at 242-43 ("When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings -- no less than debates over the wisdom of

other kinds of socioeconomic legislation -- are not to be carried out in the federal courts.").

Furthermore, the claim that Law 32 is devoid of any public use is inconsistent with the broad interpretation the Supreme Court has given to the Fifth Amendment's public use requirement. *See Berman,* 348 U.S. at 33 (recognizing that community redevelopment served a public purpose and stating that "[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled"); *Midkiff,* 467 U.S. at 242 (holding that state efforts to avert land oligopoly and correct deficiencies in the land market served a valid public purpose); *Nat'l R.R. Passenger Corp.* v. *Boston & Maine Corp.,* 503 U.S. 407, 422-23 (1992) (upholding determination that transfer of railroad tracks from one party to another that would better maintain the tracks pursued the valid public purpose of facilitating rail operations). In its recent decision in *Kelo,* the Supreme Court held that a "carefully considered" economic development plan which was found to have been adopted after "thorough deliberation", satisfied the public use requirement. 545 U.S. at 478, 484. In so holding, the court recognized the principle that a carefully considered governmental economic development plan pursues a public use where the scheme seeks to promote economic redevelopment and is designed to provide economic benefits to the community.

It is uncontested that the ENLACE Project was adopted to rehabilitate and revitalize the Martin

Peña Canal and its communities; it seeks to conduct extensive public works and improvements; and to deal with environmental degradation, and landownership issues. These are public purposes that were adopted in the context of a thorough, comprehensive, and detailed development plan, that pursuant to Law 32 will be carried out through the intervention and active participation of several public agencies. In light of the Supreme Court's decision in *Kelo,* it is clear that the ENLACE Project serves valid public purposes. While Law 32 altered the statutory scheme that was put in place by Law 489, the ENLACE Project is still alive and there is no indication that the Commonwealth has abandoned the goals of rehabilitating and revitalizing the Martin Peña Canal. The mere fact that the Commonwealth's legislature decided to pursue the goals of the ENLACE Project by transferring lands from the Fideicomiso to a host of public agencies does not render Law 32 unconstitutional under the Takings Clause.[13] More importantly, it is manifest that a governmental project by which the government owns and administers lands for the benefit of the public or community pursues a valid public purpose. *Cf. Rindge Co.* v. *Los Angeles County,* 262 U.S. 700, 706-07 (1923) (recognizing

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[13] The determination that the Fideicomiso cannot succeed in its claim that Law 32 is facially unconstitutional should not be interpreted as barring future as-applied takings challenges if it is shown that lands in the Martin Peña Canal District are taken for purely private purposes, *Midkiff,* 467 U.S. at 245, or "under the mere pretext of a public purpose," *Kelo,* 545 U.S. at 478

that the taking of property to build a highway is one for public use and explaining that "[i]t is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in an improvement in order to constitute a public use").

Law 32 reflects a legislative judgment that the public purpose of community redevelopment in the Martin Peña Canal district is better served through public ownership of the lands in controversy. Because I cannot deem Law 32 as employing irrational means to achieve the public goals delineated in Law 489, I join the majority in holding that the Fideicomiso's challenge under the public use clause fails on the merits.

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

FIDEICOMISO DE LA TIERRA DEL CAÑO MARTIN PEÑA,	)	
Plaintiff,	)	
v.	)	Civil No. 09-1581 (FAB)
LUIS G. FORTUÑO, *et al.*,	)	
Defendants	)	

OPINION & ORDER

BESOSA, DISTRICT JUDGE

Pending before the Court are several issues which have been briefed by the parties pursuant to the Court's orders. (*See* Docket Nos. 10 and 48) After examining the arguments contained in the parties' briefs regarding *Pullman* abstention, the Court hereby **DISMISSES** this case **WITHOUT PREJUDICE** due to the presence of unsettled issues of Puerto Rico law which have the potential to render consideration of any federal constitutional issues unnecessary.

DISCUSSION

I. Background

In September of 2004, Puerto Rico Law 489, P.R. LAWS ANN. tit. 23, §§ 5031-66, ("Law 489") was approved by the Puerto Rico Legislature. Law 489 is also known as the "Martin Peña Canal Special Planning District Integrated Development Act." (Docket No. 6 at ¶¶ 4.1-4.2) Law 489 was adopted in order to address the environmental issues of the Martin Peña Canal and "rehabilitate and revitalize the communities along its north and south banks in order to promote a healthy relationship between the natural environment and its surrounding city and communities, with a vision of integrated development based on community empowerment." *See* P.R. LAWS ANN. tit. 23, § 5032. The communities within the scope of the act form the Special Planning District of Martin Peña Canal ("Special Planning District"), which includes Barrio Obrero, Barrio Obrero Marina, Buena Vista Santurce, Las Monjas, Parada 27, Buena Vista Hato Rey, and Israel-Bitumul. P.R. LAWS ANN. tit. 23, § 5031.

In order to further the statute's land use development plan for the Special Planning District, Law 489 provides for the creation of the Martin Peña Canal ENLACE Project Corporation ("ENLACE") and plaintiff, the Martin Peña Canal Land Trust ("Land Trust" or "Plaintiff"). P.R. LAWS ANN. tit. 23, §§ 5046, 5048. Law 489 gives these two entities certain powers and duties to manage and develop the lands within the Special Planning District. *See* P.R.

LAWS ANN. tit. 23, §§ 5033-40, 5048. The Land Trust alleges that, in order to exercise its assigned powers and duties, Law 489 gives it ownership rights to approximately two hundred acres of land in the Special Planning District. (Docket No. 6 at ¶¶ 3.5, 4.13-4.14, 4.21)

On June 23, 2009, the Puerto Rico Legislature passed Puerto Rico Law 32 ("Law 32"), which amended Law 489 to change provisions relating to the transfer of properties within the Special Planning District. (Docket No. 6 at ¶¶ 4.24-4.26; Docket No. 58-2) Law 32 states that its purpose is to "harmonize" Law 489 with "other laws that also have as their purpose matters of the highest public interest." (Docket No. 58-2 at 1) The amendment provides for the reversion of title of certain properties within the Special Planning District to the Municipality of San Juan ("Municipality") and to Puerto Rico public agencies. (*See* Docket No. 58-2) Plaintiff alleges that Law 32's reversion of title interferes with its ownership of properties transferred to it by Law 489. (Docket No. 6 at ¶ 1.1)

On June 26, 2009, the Land Trust filed an amended complaint against: (1) Luis G. Fortuño, in his official capacity as Governor of the Commonwealth of Puerto Rico ("Fortuño"); (2) Antonio Sagardia, in his official capacity as Attorney General of the Commonwealth of Puerto Rico ("Sagardia"); (3) the Municipality; (4) Jorge Santini, in his official capacity as the Mayor of the Municipality ("Santini"); (5) the Puerto Rico Electric Power Authority ("PREPA"); (6) the Puerto Rico

Highways and Transportation Authority ("PRHTA"); and (7) the Puerto Rico Land Administration ("PRLA"). (Docket No. 6 at ¶¶ 3.7-3.14) The complaint alleges claims pursuant to 42 U.S.C. § 1983 ("Section 1983") based on violations of the Takings Clause, the Due Process Clause, and Article I, Section 10 of the United States Constitution. Id. at ¶¶ 5.2-5.4. The complaint also alleges parallel takings and due process claims under the Puerto Rico Constitution. *Id.* at ¶¶ 5.2-5.3. These claims revolve around the legislative transfers of real property pursuant to Law 489 and Law 32. *See id.*

Also on June 26, 2009, the Land Trust filed a motion for a temporary restraining order ("TRO") "prohibiting each of the defendants from in any way disposing of or managing the properties obtained by them by virtue of Law 32 . . . until the court issues its determination with respect to the constitutionality of Law 32." (Docket No. 4 at 8) On June 29, 2009, the Court denied the motion for a TRO and ordered the parties to file briefs no later than July 31, 2009, as to the following issues: (1) whether the Court should abstain from hearing this case based on the *Pullman* abstention doctrine; (2) whether the Land Trust has juridical personality with the capacity to sue and be sued; and (3) whether, under Puerto Rico law, a trust generally, or the Land Trust specifically, can hold title to property, or may only hold property in trust for its true owner. (Docket No. 10)[1] The Court

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[1] Plaintiff subsequently appealed the Court's denial of the motion for a TRO. (Docket No. 35) Although the Court of

subsequently ordered the parties to include in their briefs discussion of whether the Commonwealth of Puerto Rico may, by virtue of the enactment of another statute, transfer title to lands previously transferred to the Corporation from other public agencies or from the public domain by virtue of Law 489, to any other public agency, or return them to the public domain. (Docket No. 48)

On July 31, 2009, the all parties complied with the Court's orders to brief the abovementioned issues. (Docket Nos. 58, 59, 63, 70, 75, & 77) Several defendants also filed motions to dismiss on July 31, 2009, arguing, *inter alia*, that the Court should abstain from adjudicating this case due to the presence of several unsettled issues of Puerto Rico law. (*See* Docket No. 61 at 17; Docket No. 65; Docket No. 76)

Appeals for the First Circuit found that it lacked jurisdiction over the appeal, it stated that "[a]s part of its ruling, the district court should make a finding on the issue of whether the [Land] Trust is a public or private entity." (Docket No. 154 at 7, 9 n. 3) That finding, however, is related to a federal constitutional standing requirement for a Takings Clause claim. *See Asociacion de Subscripcion Conjunta del Seguro de Responsabilidad Obligatorio v. Flores Galarza*, 484 F.3d 1, 20 (1st Cir. 2007). Given that *Pullman* abstention has been found appropriate with regard to the Land Trust's federal constitutional claims, it is unnecessary for the Court to make a determination as to the Land Trust's public or private nature at the present time.

II. Legal Analysis

A. Standard for *Pullman* Abstention

"Abstention from the exercise of federal jurisdiction is the exception, not the rule." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Although abstention is reserved for exceptional circumstances, "'[a]mong those cases that call most insistently for abstention are those in which the federal constitutional challenge turns on a state statute, the meaning of which is unclear under state law.'" *Ford Motor Co. v. Meredith Motor Co.*, 257 F.3d 67, 71 (1st Cir. 2001) (quoting *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 84 (1974)). Pursuant to the abstention doctrine created in *R.R. Comm'n v. Pullman Co.*, 312 U.S. 496 (1941), "a federal court confronted with such circumstances 'should stay its hand in order to provide the state court an opportunity to settle the underlying state-law question and thus avoid the possibility of unnecessarily deciding a constitutional question.'" *Id.*

"[T]he *Pullman* abstention doctrine serves the dual aims of avoiding advisory constitutional decisionmaking as well as promoting the principles of comity and federalism by avoiding needless federal intervention into local affairs." *Pustell v. Lynn Pub. Schs.*, 18 F.3d 50, 53 (1st Cir. 1994) (citing 17A CHARLES A. WRIGHT, ARTHUR R. MILLER AND EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4242 (1988)). In the particular context of unsettled issues of Puerto Rico law, "abstention [is] especially

beneficial . . . because . . . '[a] rigid rule of deference to interpretations of Puerto Rico law by *Puerto Rico courts* is particularly appropriate given the unique cultural and legal history of Puerto Rico.'" *Cuesnogle v. Ramos*, 835 F.2d 1486, 1495 (1st Cir. 1987) (emphasis in original) (quoting *Posadas de P. R. Assoc. v. Tourism Co. of P.R.*, 478 U.S. 328, 339 n. 6 (1986)).

When determining whether *Pullman* abstention is appropriate, the court must consider: "(1) whether there is substantial uncertainty over the meaning of the state law at issue; and (2) whether a state court's clarification of the law would obviate the need for a federal constitutional ruling." *Ford Motor Co.*, 257 F.3d at 71. The nature of the unsettled issue can also weigh in favor of abstention. *See Pustell*, 18 F.3d at 54 (finding abstention more appropriate where unsettled issue of state law dealt with educational policy); *San Remo Hotel v. City and County of San Francisco*, 145 F.3d 1095, 1104 (9th Cir. 1998) (holding "land use planning" to be a "sensitive social policy" meriting *Pullman* abstention). Furthermore, "suits for injunctive relief, unlike suits which seek only monetary relief, are highly intrusive into legitimate state functions." *Corporacion Insular de Seguros v. Garcia*, 680 F.Supp. 476, 480-81 (D.P.R. 1988).

B. Unsettled Issues of Puerto Rico Law

After examining the parties' briefs and the statutes which form the basis of the dispute in this case, it is evident that there are unsettled issues of

Puerto Rico Law which militate in favor of *Pullman* abstention. These issues relate to: (1) the Land Trust's legal status; and (2) the validity of any purported legislative transfers of property in Law 489 and Law 32.

Legal Status of the Land Trust

There is significant uncertainty under Puerto Rico law as to the nature of the Land Trust as an entity. Although Law 489 refers to the Puerto Rico Civil Code provisions governing trusts, or *fideicomisos*, it also gives powers and faculties to the Land Trust beyond those typically attributed to trusts. The Land Trust argues that its structure is based on a "Community Land Trust" model used in other parts of the United States, rather than the Puerto Rico Civil Code. (Docket No. 106 at 18) Plaintiff cites its Development Plan stating that the "Community Land Trust" is "a novel and creative means of attending to the situation of ownership in the [Special Planning District] and to minimize involuntary displacement ('gentrification') of the communities." *Id.* The disparity between novel characteristics of the Land Trust and traditional characteristics of a trust under the Puerto Rico Civil Code creates an unsettled issue of Puerto Rico law, the resolution of which could define the rights or powers of the Land Trust.

Under Puerto Rico law, a trust has no independent juridical capacity and cannot hold title to property, sue, or be sued. *See* P.R. Laws Ann. tit. 31, § 2578 (providing that title is to be registered in

the name of the trustee); *Benitez-Bithorn v. Rossello-Gonzalez*, 200 F.Supp.2d. 26, 31 (D.P.R. 2002). The typical trust's incapacity to sue and hold title to property does not cause significant uncertainty over Puerto Rico law in this case. If a typical trust brings suit over property issues, a court may simply replace the trust with the real party in interest who has the capacity to sue and hold title to property, i.e., the trustee(s). *See Benitez-Bithorn*, 200 F.Supp.2d. at 31-32. The significant uncertainty in this case, however, stems from language in Law 489 regarding the Land Trust as an entity that departs from the traditional structure of a trust as contemplated by the Puerto Rico Civil Code.

Law 489 provides that "[t]he Land Trust is hereby created with independent juridical personality." P.R. LAWS ANN. tit. 23, § 5048. Although the statutory provision creating the Land Trust indicates that it will be "the custodian" of "all the lands transferred to the Corporation," the same provision also states that the Land Trust "shall have the ownership rights to the land," and refers to "the lands owned by the Land Trust." P.R. LAWS ANN. tit. 23, § 5048. Pursuant to Law 489, the Land Trust is also given the power to acquire property through various means, including eminent domain, the public nuisance process, and ownership transfer from public entities. P.R. LAWS ANN. tit. 23, § 5048(b)(2)-(7). Furthermore, the Land Trust may issue "participation bonds" as a form of investment in community development. P.R. LAWS ANN. tit. 23, § 5048(b)(10).

The trust, or *fideicomiso*, of the Puerto Rico Civil Code is the result of years of development and interpretation. *See Davila Vega v. Agrait*, 16 P.R. Offic. Trans. 674 (P.R. 1985). "The Puerto Rican 'fideicomiso', an institution with very peculiar characteristics of its own, incorporates the principles of the Anglo-Saxon 'trust' and tries to harmonize them with [Puerto Rico's] civil law tradition." *Davila Vega*, 16 P.R. Offic. Trans. 674 (citing *Alvarez v. Sec'y of the Treasury*, 78 P.R.R. 395, 401-402 (1955), on reconsideration, 80 P.R.R. 15, 20, 33-39 (1957)). In *Davila Vega v. Agrait*, 16 P.R. Offic. Trans. 674 (P.R. 1985), the Puerto Rico Supreme Court describes the historical development of the trust under Puerto Rico law over the course of the twentieth century, which included the incorporation of elements from both the common and civil law traditions. The Puerto Rico Supreme Court has considered various common and civil law sources in defining the nature of the trust under Puerto Rico law when confronted with its "grey zones, . . . gaps and vacuums." *See id.* Given the unique development of the Puerto Rican trust and its incorporation of numerous foreign elements, any decision regarding the legal status of the Land Trust and its novel characteristics adapted from the "Community Land Trust" model is more appropriately left to the Puerto Rico courts.

Validity of Property Transfers in Law 489 and Law 32

Another unsettled issue of Puerto Rico law presents itself in the provisions of Law 489 and Law

32 purporting to transfer property. These provisions create an unclear statutory scheme which has never been interpreted by the Puerto Rico courts. According to the factual allegations in the complaint, the subject of the current litigation is the real property contained within the communities of Barrio Obrero, Barrio Obrero Marina, Buena Vista Santurce, Las Monjas, Parada 27, Buena Vista Hato Rey, and Israel-Bitumul. (*See* Docket 6 at ¶ 4.1-4.2) Law 489, however, is not entirely clear as to what property is subject to its land use development plan. *See* P.R. LAWS ANN. tit. 23, § 5031-66. Neither is it clear as to which public or private entities are actually vested with title to the property falling within the statute's scope. *See id.* The uncertainty regarding the scope and definition of properties is further reflected in Law 32's subsequent amendment to Law 489. (*See* Docket No. 58-2)

The original version of Law 489 has several provisions relating to identification and transfer of various property rights, none of which lend sufficient clarification to preclude *Pullman* abstention. *See* P.R. LAWS ANN. tit. 23, §§ 5045-5048. Section 5045 provides that "[i]n the case of lands of public domain or patrimony, the ownership rights thereof through this chapter shall remain vested [in] the Corporation [ENLACE]," subject to certain exceptions. *See* 23 P.R. LAWS ANN. tit. 23, § 5045. These exceptions are contained in Section 5046, which provides for an official delimitation to be conducted by the Puerto Rico Department of Natural and Environmental Resources related to a canal development project

planned by the United States Army Corps of Engineers. P.R. LAWS ANN. tit. 23, § 5046. After completion of the delimitation, the statute provides for then undetermined land to be transferred to ENLACE. *Id.* ENLACE would then "create the Land Trust with these transferred lands, as provided by this chapter, which it shall manage on behalf of the communities of the [Special Planning District]." *Id.*

Despite Section 5045's statement that ownership of public domain or patrimony lands would remain vested with ENLACE, the original version of Law 489 also contains several provisions discussing ownership rights with respect to the Land Trust. *See* P.R. LAWS ANN. tit. 23, § 5048. As discussed above, Section 5048 provides that the Land Trust will be "the custodian" of "all the lands transferred to the Corporation [ENLACE]." *Id.* Section 5048 also states that the Land Trust "shall have the ownership rights to the land," and refers to "the lands owned by the [Land] Trust." *Id.* Furthermore, Section 5048 states that the Land Trust has the power to acquire other property, including public lands. P.R. LAWS ANN. tit. 23, § 5048(b)(2)-(7).[2]

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[2] Plaintiff argues that the original version of Law 489 clearly gives it ownership rights over public domain lands. (Docket No. 106 at 42-43) It argues that the wording of the official English translation of Law 489 is incorrect, and this Court should instead rely on the authoritative Spanish version of the text. (*See* Docket No. 106 at 42-43) The Land Trust states that the language in Section 5045 stating that title to

Law 32's amendment of Law 489 does little to clarify the scope or direction of the statutory scheme at issue in this case. (*See* Docket 58-2) In its legislative preamble, Law 32 hints at the uncertainty in the original version of Law 489. *See id.* at 1-2. Law 32 states that public agencies and the Municipality "may have their own objectives, purposes, and programs," and that "[i]t is proper, therefore, that to harmonize what it provided in

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public domain and patrimony lands "shall remain vested" in the Corporation, is an error in translation and that a proper translation of the statute would place lands with the Corporation only for the period of time until they were to be transferred to the Land Trust. *Id.* Plaintiff argues that this Court should recognize the translation error and apply the meaning they claim is contained in their certified English translation, which it claims to be closer to the original Spanish version of the statute. Plaintiff states that Puerto Rico law holds original Spanish versions of statutes to be authoritative when there is a discrepancy between the original Spanish version and its English translation. *Id.*; *See* P.R. LAWS ANN. tit. 31, § 13.

Plaintiff's argument, however, only serves to highlight the appropriateness of abstention in the present case. Even assuming, arguendo, a translation error exists, this Court may not rely on any untranslated material in the Spanish language, including the original Spanish version of Law 489, to make a determination as to the accuracy of an English translation. *See Puerto Ricans for P.R. Party v. Dalmau*, 544 F.3d 58, 67 (1st Cir. 2008); Local Rule 10(b). The resolution of property rights that may or may not have been conferred or removed pursuant to Laws 489 and 32 turns on the proper construction of those laws. If, as the Land Trust argues, there is an error in the official translation, the Puerto Rico Courts would be a far more appropriate forum to address that issue, as they may rely on the authoritative Spanish text of the statute.

[Section 5045] with other laws that also have as their purpose matters of the highest public interest, that [Section 5045] be amended." *Id.* Law 32 further finds it necessary "to amend [Section 5045] to suppress the reference to public domain property, since these are not susceptible to individual ownership." *Id.* at 2 (citing P.R. LAWS ANN. tit. 31, § 1025).

The substantive amendments contained in Law 32 only apply to Section 5045 of the original version of Law 489, providing for reversion of title to any property that previously belonged or pertained to the Municipality. (Docket 58-2 at 2) Law 32 also provides for, *inter alia*, reversion of title to agencies of the Commonwealth of Puerto Rico, pending studies to determine which properties are actually appropriate for transfer to the Corporation. (Docket 58-2 at 3) Law 32, however, contains no amendments to other sections of Law 489, thus leaving intact other contradictory provisions of the statute regarding transfer of title and ownership, such as Section 5048. *See* P.R. LAWS ANN. tit. 23, §§ 5046-5048.

In conclusion, Law 489's provisions regarding property are not entirely clear as to the scope of its effect on vaguely defined real property. *See* P.R. LAWS ANN. tit. 23, §§ 5045-5048; (Docket 58-2) This lack of clarity also extends to the transfer of title to any lands affected by Law 489. *See id.* Without further interpretation as to the validity or scope of its land transfers, Law 489 and its subsequent amendment through Law 32 form a substantially

uncertain statutory scheme regarding an undetermined property base and its future land use development plan.

C. Whether the unsettled issues of Puerto Rico law could obviate the need to consider federal constitutional issues

The complaint contains Section 1983 claims based on several alleged constitutional violations, including: (1) violations of substantive and procedural due process; (2) violation of the takings clause; (3) and violation of Article I, Section 10 of the United States Constitution.[3] According to the applicable case law and the allegations of the complaint, all of these constitutional violations are

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[3] Plaintiff alleges two claims under Article I, Section 10 of the United States Constitution. (Docket No. 6 at ¶ 5.4) The first claim alleges that Law 32 constitutes a "Law impairing the Obligation of Contracts." *Id.*; U.S. CONST. art. I, § 10, cl. 1. The second claim alleges that Law 32 constitutes an *ex post facto* law or bill of attainder. (Docket No. 6 at 5.4) The second claim is inappropriate in this case. The Constitutional language prohibiting bills of attainder and *ex post facto* laws deals with individual punishment for past conduct and "retroactivity of penal legislation . . . ," not government interference with private property rights. *See Eastern Enterprises v. Apfel*, 524 U.S. 498, 533-34 (1998) (citing *Calder v. Bull*, 3 Dall. 386, 1 L.Ed. 648 (1798)); *Lynce v. Mathis*, 519 U.S. 433, 440 n. 12 (1997) (citing *United States v. Brown*, 381 U.S. 437, 456-62 (1965)). Given that the complaint only alleges governmental action toward private property rights, the Land Trust's second claim based on Article I, Section 10 of the United States Constitution would not survive even if the court decided against *Pullman* abstention.

based on the validity of property rights held by the Land Trust. *See Franklin Mem. Hosp. v. Harvey*, 575 F.3d 121, 125 (1st Cir. 2009) (takings clause); *SFW Arecibo, Ltd. v. Rodriguez*, 415 F.3d 135, 139 (1st Cir. 2005) (procedural due process); *Maldonado v. Fontanes*, 568 F.3d 263, 272-73 (1st Cir. 2009) (substantive due process); *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992) (contracts clause); (Docket No. 6 at ¶¶ 3.6, 4.23, 5.2-5.4) (alleging federal constitutional claims based on interference with property rights). These property rights "are creatures of state law." *See Chongris v. Bd. of Appeals of Town of Andover*, 811 F.2d 36, 43 (1987) (citing *Bishop v. Wood*, 426 U.S. 341, 344 n. 7 (1976); *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)). This Court must therefore look to Puerto Rico law to determine whether the Land Trust has any property rights that may give rise to the constitutional claims alleged in the complaint. *See id.*

Depending on the resolution of the unsettled issues of Puerto Rico law outlined above, the Land Trust may not have the property rights necessary to sustain its federal constitutional claims. The ambiguities and contradictions in Law 489 and Law 32 leave open the possibility that their land transfers are either invalid, or directed toward ENLACE rather than the Land Trust. Furthermore, any determination as to the Land Trust's legal status could affect its ability to hold title to any property, including the property which is the subject of this litigation. Given that state law property rights are

necessary to bring the federal constitutional claims alleged in the complaint, interpretations of these unsettled issues regarding property rights in the Special Planning District could potentially moot any decision of this Court regarding those federal constitutional claims.

D. Abstention in this Case

Both elements for the exercise of *Pullman* abstention are satisfied. *See Ford Motor Co.*, 257 F.3d at 71. This case presents unsettled issues of Puerto Rico law which have not been interpreted by the Puerto Rico courts. The resolution of these issues could potentially nullify any property interest held by the Land Trust, thereby obviating consideration of its federal constitutional claims.

Other factors, such as the nature of the unsettled issues of Puerto Rico law and the relief requested in the complaint, support abstention. With the exception of attorneys' fees, the Land Trust seeks only injunctive and declaratory relief with regard to the land use development plan created by Law 489 and Law 32. (*See* Docket No. 6 at ¶¶ 5.2-5.3, 5.6) This injunctive relief would be highly intrusive federal intervention in a significant state interest, land use planning, which has been accorded special consideration in *Pullman* abstention analysis. *See San Remo Hotel*, 145 F.3d at 1104; *Corporacion Insular de Seguros*, 680 F.Supp. at 480-81. Therefore, it appears that abstention in the present case would further serve the purposes of *Pullman* abstention related to comity and federalism by

decreasing the possibility of federal interference in state law matters. *See Pustell*, 18 F.3d at 53.

Furthermore, special deference is paid to the Puerto Rico courts regarding Puerto Rico law. *See Cuesnogle*, 835 F.2d at 1495. This deference appears especially important in this case, where the Land Trust, a novel entity under Puerto Rico law, claims that the official English translation of a statute is erroneous and argues that Law 489's meaning is clear in light of the original Spanish text. (*See* Docket No. 106 at 42-43) This Court is prohibited from relying on the Spanish version of Law 489, thus making an initial interpretation of the statute in the Puerto Rico courts, both linguistically and legally, all the more appropriate. Given this deference and the factors outlined above, this Court finds *Pullman* abstention appropriate in the circumstances of the present case.

When exercising *Pullman* abstention, a court may stay litigation in the federal forum until the conclusion of state court proceedings or dismiss the case without prejudice. *See Rivera Vazquez v. Asociacion de Residentes de University Gardens*, 220 F.Supp.2d 95, 98 (D.P.R. 2002) (citing *Harris County Commissioners Court v. Moore*, 420 U.S. 77, 88-89 (1975); *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 496 n.9 (1st Cir. 1992)). The particular equitable relief requested by the Land Trust reflects a need for efficiency and convenience. *See Rivera Vazquez*, 220 F.Supp.2d at 99 (citing *Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 534-35 (1st Cir. 1995); *El Dia, Inc.*, 963 F.2d at 493-98.

Given that consideration of all federal constitutional claims alleged in the complaint could be obviated through the resolution of unsettled issues of Puerto Rico law, those needs would be best served by dismissing the present case without prejudice. *See id.*

Although the court has decided to abstain at this time, the Land Trust will have "an adequate and fair opportunity to have their federal claims heard." *Pustell*, 18 F.3d at 55 n.7 (citing *Gibson v. Berryhill*, 411 U.S. 564 (1973)). The Land Trust "may choose to present all claims in state court; alternatively, they may reserve federal constitutional claims for adjudication in federal court." *Id.* (citing *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 421-22 (1964)). If the Land Trust reserves its federal constitutional claims, it "may file a petition to reinstate proceedings in this case" upon the resolution of unsettled of issues of Puerto Rico law by the Puerto Rico courts. *See id.*; *Rivera Vazquez*, 220 F.Supp.2d at 99.[4]

CONCLUSION

For the reasons expressed above, the Court **DISMISSES** plaintiff's claims **WITHOUT PREJUDICE**. Given that all claims in the complaint have been dismissed without prejudice, defendants'

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[4] Rather than being considered a new filing, this petition shall relate back to the filing date of the present complaint. *See Rivera Vazquez*, 220 F.Supp.2d at 99.

dispositive motions (Docket Nos. 61, 65, 71, 76, 78) are hereby deemed **MOOT**. All other motions pending resolution are also deemed **MOOT**.

IT IS SO ORDERED.

San Juan, Puerto Rico, November 10, 2009.

s/ Francisco A. Besosa
FRANCISCO A. BESOSA
UNITED STATES DISTRICT JUDGE

Appendix C

No. 09-2569

UNITED STATES COURT OF APPEALS

For the First Circuit

FIDEICOMISO DE LA TIERRA DEL CANO MARTIN PENA,

PLAINTIFF - APPELLANT,

v.

LUIS FORTUNO, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO; ANTONIO M. SAGARDIA-DE-JESUS, IN HIS OFFICIAL CAPACITY AS SECRETARY OF JUSTICE OF THE COMMONWEALTH OF PUERTO RICO; MUNICIPALITY OF SAN JUAN; JORGE SANTINI, IN HIS OFFICIAL CAPACITY AS THE MAYOR OF THE MUNICIPALITY OF SAN JUAN; AUTORIDAD DE ENERGIA ELECTRIC, DE PUERTO RICO (ACE); AUTORIDAD DE CARRETERAS; ADMINISTRACION DE CORRECCION Y REHABILITACION, TERRENOS

DEFENDANTS - APPELLEES

Before

Lynch, Chief Judge,
Torruella, Boudin, Lipez
Howard and Thompson,
Circuit Judges.

ORDER OF COURT

Entered June 3, 2010

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

/s/ Margaret Carter, Clerk

cc: Eliezer Alberto Aldarondo-Lopez
Eliezer Aldarondo-Ortiz
Claudio Aliff-Ortiz
Francisco J. Amundaray-Rodriguez
Judith Berkan
Carlos Enrique Cardona Fernandez
Raul Castellanos-Malave
Orlando Duran Medero
Michael Craig McCall
Mary Jo Mendez-Vilella
Miguel Pagan
Eric R. Ronda-Del Toro
Angel E. Rotger-Sabat
Pedro L. Saade-Llorens
Juan B. Soto-Balbas

Appendix D

H. B. 4916)

(NO. 489)

(Approved September 24, 2004)

AN ACT

To adopt the "Martín Peña Canal Special Planning District Integrated Development Act;" to create the Martín Peña Canal ENLACE Project Corporation and the Office of the Project, as well as a Land Trust; to provide for its existence, administration and financing; to appropriate funds and for other related purposes.

STATEMENT OF MOTIVES

The Legislature, on the basis of the public policy of the Commonwealth of Puerto Rico, which states that community development, should be spearheaded by the members of the communities thereof, hereby establishes a mechanism whose purpose is to articulate the implementation of the Martín Peña Canal ENLACE Project efficiently, providing for the effective participation of the community-based organizations that represent the residents of the communities involved in all instances of the decision-making process.

The rehabilitation of Martín Peña Canal and the communities settled along its banks is one of the most transcendental projects to be undertaken by the

Government of Puerto Rico at the onset of the 21st Century. This body of water, which flows east to west through the heart of San Juan, is a vital component of the San Juan Bay Estuary, one of the Metropolitan Area's most important natural resources.

In mid-20th Century, the Canal and the wetlands related thereto were the recipients of the wave of migrant workers displaced from the rural areas of the Island who settled along its banks in search of better living conditions. The spontaneous occupation of these lands, which constitute such an important mangrove swamp system, was made possible through the deposit of landfill consisting of debris and solid residue, over which thousands of structures were built. As a consequence, this unplanned urbanization process of the sector has produced the environmental degradation of the Martín Peña Canal and the San Juan Bay Estuary, causing the reduction of the canal and increasing the risk of floods.

Due to the impact on some portions of the land formerly occupied by the mangrove swamp, restoration to its natural state is considered to be technically irreversible. Approximately 30,000 persons reside in these lands in the communities of *Barrio* Obrero, *Barrio* Obrero-Marina, Buena Vista-Santurce, Stop 27, Las Monjas, Buena Vista-Hato Rey, Israel-Bitumul and the Cantera Peninsula, which constitute communities of irreplaceable importance for the city. They are significant sources of skilled labor for the city's construction and

services sectors. Their buying power supports many of the city's small businesses, which in turn are an important source of employment therein. Above all, they are centers of recognized importance to the Island's social and cultural creative process and endeavor. In spite of the fact that their labor participation rate as well as their levels of employment are higher than those of the rest of Puerto Rico, the income of these families is below poverty level in a larger proportion than that of the residents of San Juan and the rest of the Island. For more than 40 years, there have been innumerable proposals directed toward displacing these communities from their strategic location.

In addition, for several decades, the Government of Puerto Rico and the Municipal Government of San Juan conducted various processes for granting and recognizing the ownership titles of many residents who occupied land-filled areas in the Martín Peña Canal. Some of these residents are uncertain about the validity of these titles, since the procedures the government conducted did not meet all of the requirements of law for their recognition and formal registration by means of deeds in the Property Registry. The legal standing of these procedures for granting ownership titles must be clarified and resolved in a definite and firm manner for the peace of mind and well-being of the families of the District, and also to provide alternatives to prevent the long term involuntary displacement of the communities.

The Government of Puerto Rico, together with the United States Army Corps of Engineers, is promoting a Martín Peña Canal dredging and canalization project, which shall allow the restoration of the flow and reflow capacity of the Canal's waters, reestablishing the connection of the San José Lagoon and San Juan Bay. The development of this project shall require the relocation of a substantial number of families that currently live under precarious conditions. The environment is polluted due to the lack of infrastructure, which negatively affects the health of the population. For these reasons, the rehabilitation of the Martín Peña Canal and its neighboring communities is one of the prioritary Strategic Projects to be developed by the Government of Puerto Rico, which has been designated as the Martín Peña Canal ENLACE Project.

The Government of Puerto Rico intends to rehabilitate and revitalize this district, protecting the permanence of these communities that constitute a vital thread in the cultural, social and economic fabric of San Juan and of the entire Island, while creating the conditions for integrating them into the urban fabric of the city, offering its residents a dignified life and the appropriate environmental conditions for fosterimg the rehabilitation of the San Juan Bay Estuary.

The Martín Peña Canal ENLACE Project has been under the direction of the Department of Transportation and Public Works and the Highways and Transportation Authority since late 2001. On

May 17, 2002, by means of a Resolution, the Planning Board designated the Special Planning District of the Martín Peña Canal, which consists of the communities of *Barrio* Obrero, *Barrio* Obrero-Marina, Buena Vista-Santurce, Stop 27, Las Monjas, Buena Vista-Hato Rey, and Israel-Bitumul, delegating to the Highways and Transportation Authority the development of a Special Land Use Plan. Previously, in 1992, legislation was approved to create the Company for the Integrated Development of the Cantera Peninsula with the responsibility of leading the integrated development of this community by means of a pioneer model based upon self-management and community empowerment. Both initiatives are complementary and necessary for handling the situation of environmental degradation of the Canal.

The Government of Puerto Rico has already invested resources for contracting studies to comply with the applicable environmental legislation for the project to dredge to the Canal, in the preparation of the Land Use Plan, and in the development of an Integrated Development Plan. Both plans have been fashioned as corrective action plans against the situation of environmental degradation and pollution, the vulnerability to natural and anthropogenic hazards, and the limitations of the social and economic structure that perpetuate poverty. It has also invested in the development of infrastructure projects, the creation of programs to make citizen participation feasible, and the development of related activities, such as the

superficial cleanup of the Canal, among others. It is equally necessary to protect the experience of more than two years of work and citizen participation that constitute a self-management and empowerment effort of the seven communities that constitute the Special Planning District of the Martín Peña Canal, in close coordination and participation with the Cantera Peninsula. These communities have an Office of Citizen Participation for the ENLACE Project within the District that fosters their active presence in the planning and rehabilitation processes of the area. The community-based organizations in these communities have joined forces and constituted the *Grupo de las Ocho Comunidades* (the G-8), Inc., in order to participate in these procedures in a more effective manner, and attend to the challenges and opportunities they share.

To guarantee the effective administration of the several initiatives and projects within the Special Planning District of the Martín Peña Canal, an entity must be created, whose mission shall be to implement the public policy of the Government regarding the development of the Martín Peña Canal ENLACE Project and the neighboring communities. It is also necessary to provide said entity with a clear mandate that allows the latter to carry out fully its task of promoting self-management and socio-economic development in an agile, transparent manner free from political-partisan interference.

The Legislature hereby creates the Martín Peña Canal ENLACE Project Corporation as the

entity legally responsible for the coordination and implementation of all stages of the Martín Peña Canal ENLACE Project, which include the implementation of the Integrated Development Plan and the Land Use Plan for the Special District of the Martín Peña Canal in the housing, urban development, infrastructure and socio-economic development areas, and all projects related to the dredging and canalization of said body of water, as well as the development of community initiatives that promote social, economic and cultural development.

This corporation shall be responsible for the coordination of Government efforts and citizen participation in order to train, promote, grant incentives and create the necessary mechanisms to give continuity to the ENLACE Project and achieve its goals. This Act establishes the public policy to direct the procedures for the relocation of families and attending to the prevailing lack of ownership titles in the area, as well as the mechanisms that shall allow for the minimization of the involuntary displacement of the communities. This Act also creates the necessary mechanisms for the short and long term financing of the projects and programs that are included in the Integrated Development Plan and the Land Use Plan, and gives the new entity the authority to carry these out thus fostering the principle of community self-management and empowerment that makes the residents the central hub of the planning, renewal and development activities within their community. The Legislature

also intends to promote alliances among the communities, the public sector, and the private entrepreneurial and nonprofit sectors that make the socio-economic development of the target sector of the Project possible in such a manner that it becomes a model of integrated action that incorporates the capability and will of the communities to work on the solution of their problems.

Even more importantly, through the approval of this bill, the Legislature creates a mechanism to strengthen citizen participation so that the community may see its capabilities and aspirations channeled in order to achieve unity and consensus over the protection of its rights. These rights entail the corresponding duties and responsibilities as individuals and communities to collaborate toward the common good which shall result in a better quality of life. With this motivation in mind, this measure provides that the Corporation shall be directed by a Board of Directors with active representation of the residents of the Special Planning District of the Martín Peña Canal.

To guarantee the effective implementation of the public policy stated herein, this measure grants to the Corporation the appropriate financial capability to achieve its purposes. The Corporation is hereby authorized to appropriate recurring funds from other agencies, municipalities, the Federal Government, public corporations and instrumentalities of the Government of the Commonwealth of Puerto Rico, and persons and entities from the private sector in order to defray

part of its financial operations. Furthermore, in agreement with its own juridical personality, the Corporation is hereby endowed with the authority to acquire personal and real property and to dispose thereof in agreement with the general purposes of this Act. Likewise, the Secretary of the Treasury is hereby authorized to receive donations for the Corporation from the taxpayers, a task which he/she shall notify to the taxpayers through the media that he/she deems appropriate.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Short Title

This Act shall be known by the Short Title "Martín Peña Canal Special Planning District Integrated Development Act."

Section 2.- The following words and terms, when used or referred to in this Act shall have the meaning stated hereinbelow, unless another meaning clearly arises from the context:

(a) "Public Agency" is any department, board, commission, division, office, bureau, administration, public corporation or subsidiary thereof, municipality, municipal corporation, or consortium, or instrumentality of the Commonwealth of Puerto Rico, including any of its officers, employees

or members who act or appear to act in the discharge of their official duties.

(b) "Social Capital" is the set of rules of trust, values, attitudes and networks between persons and institutions in a community that define the degree of interrelations between the different social actors and facilitate collective and cooperative activities.

(c) "Community Economic Development" is a process through which the conditions that allow the empowerment of community residents are created so that the latter may develop the material and social mechanisms to permanently promote their economic and social well-being.

(d) "District" is the "Martín Peña Canal Special Planning District" as designated by the Planning Board Resolution of May 17, 2002. The District includes the following seven (7) communities: (1) *Barrio* Obrero (West and San Ciprián), (2) *Barrio* Obrero-Marina, (3) Buena Vista-Santurce, (4) Stop 27, (5) Las Monjas, (6) Buena Vista-Hato Rey and (7) Israel-Bitumul, as delimited by Planning Board Resolution. The Planning Board may modify the referred Resolution by means of an amendment adopted pursuant to its

Organic Act and the Uniform Administrative Procedures Act, and after holding public hearings, but the exclusion of any of the aforementioned communities shall require legislative authorization by means of an amendment to this Act. The community of Cantera is not part of the District, but it shall participate and benefit from this Act pursuant to its specific provisions included hereinafter, including representation in the G 8.

(e) "Joint Venture" is an enterprise or entrepreneurial activity in which residents of the District and the Cantera Peninsula and external entrepreneurs or investors participate. The alliances may be of partnerships in a single business, alliances between preexisting businesses, or alliances created to attend to particular needs. Said ventures shall have self-management, empowerment and community development among their principles, and therefore, control thereof shall eventually be in the hands of the residents themselves.

(f) "Community Enterprise" is an enterprise whose owners are bona fide residents of the District and the Cantera Peninsula, or which is under the control of the bona fide residents of

the District and the Cantera Peninsula. In the case of joint ventures or enterprises, those in which the community partners, whether natural or juridical persons, have control over the venture or enterprise are considered to be community enterprises. In case that the community partners temporarily transfer said control in exchange for other concessions and advantages, said transfer of control shall never exceed twice the time it takes the enterprise to recover the investment of the external partners; said term shall never exceed ten (10) years.

(g) "Private Entity" means any association, organization, institute or natural or juridical person that lends, offers or renders any service or activity, or that manages any program that tends to the needs of the community.

(h) "Land Trust" means the "Martín Peña Canal Land Trust," which is created by this Act.

(i) "Conservation Strip" means the wetlands conservation and mitigation strip which shall be created along both banks of the Martín Peña Canal.

(j) "The G-8" is "*Grupo de las Ocho Comunidades*" [Group of the Eight Communities], an entity that groups the community based leadership of the communities that constitute the District and the Cantera Peninsula, as this organization has been incorporated in the Department of State.

(k) "The Corporation" is the Martín Peña Canal ENLACE Project Corporation created by virtue of this Act.

(l) "The Board" is the Board of Directors and the body that governs the Martín Peña Canal ENLACE Project Corporation created by virtue of this Act.

(m) "ENLACE Project" is the "Martín Peña Canal ENLACE Project," as designated by the Department of Transportation and Public Works with respect to the rehabilitation of the Martín Peña Canal.

(n) "Register of Bidders" is the "Register of Enterprises and Bidders of the Martín Peña Canal," created by virtue of this Act.

(o) "Register of Residents and Businesses" is the "Register of Residents, Businesses and Nonprofit Organizations of the

"Martín Peña Canal Special Planning District" created by virtue of this Act.

(p) "Peripheral thoroughfare" is the vehicular, pedestrian and cyclist transportation corridor parallel to the conservation strip, separating the construction space of the communities from the natural space.

Section 3.- Public Policy

It shall be the public policy of the Commonwealth of Puerto Rico to give priority attention to the environmental restoration of the Martín Peña Canal and to rehabilitate and revitalize the communities along its north and south banks in order to promote a healthy relationship between the natural environment and its surrounding city and communities, with a vision of integrated development based on community empowerment. The vision set forth by the communities surrounding the Martín Peña Canal of having "A united, safe and prosperous community, a model of self-managerial coexistence in the heart of San Juan is hereby adopted." This project designated as the Martín Peña Canal ENLACE Project has the following purposes:

Environmental: To enable the rehabilitation of the San Juan Bay Estuary, improve the quality of its waters and the habitat of its fauna and wildlife by broadening and dredging of the Martín Peña Canal and a conservation strip along both banks thereof.

Socio-economic: To improve the living conditions of the approximately thirty thousand (30,000) residents of the eight communities located along both sides of the Canal in the areas of public sanitation, housing, ordinance and quality of the urban spaces and the infrastructure. To achieve a healthy and enriching relationship between the communities of the sector and their urban surroundings, the recovery of the potential for tourism, recreation and education of the Canal, and the participation of the current residents in the new employment opportunities, development of businesses, and the increase in land value that shall be created through the rehabilitation and reform of the area.

Institutional: To promote civic and democratic development through the active participation of the residents in the planning and rehabilitation processes of the area.

It shall be the public policy of the Commonwealth of Puerto Rico to promote the on-site rehabilitation and revitalization of the eight communities that constitute the District and the Cantera Peninsula and to foster an integrated community development spearheaded by the members of the communities themselves. It shall also be the policy of the Government to harmonize the components of the ENLACE Project through the full participation of all the residents of the District in coordination with the G-8.

The intervention model fostered by this Government is based on the following principles:

1. Community self-management and empowerment whereby the resident is the core of the planning, renewal and development activities.

2. The alliance between the communities, the public and private nonprofit sectors, and the private entrepreneurial sector assuming the various responsibilities in order to foster development.

3. An integrated approach directed toward the poverty problem which fosters the processes for community economic development and the development of the community social capital needed to forge a better quality of life, along with the processes for physical and environmental rehabilitation.

4. To watch over and promote a culture of conservation, sensitivity and respect toward the Matín Peña Canal ecological resource, as a component of a highly important natural resource, to wit, the San Juan Bay Estuary.

5. To maximize the possibilities of relocating within the District itself those residents who must be relocated and who wish to remain in the District,

as a result of the implementation of the ENLACE Project. This includes, but is not limited to, the identification and protection by the residents and the Government of all available land and space in order to make possible the relocation of residents affected by the dredging of the Canal and the works of infrastructure within the communities themselves.

6. To ensure that the economic opportunities generated by the public investments in the District lead to more community empowerment and the improvement of the economic situation and quality of life of the residents therein.

7. To make certain that the interventions of the Corporation, public agencies and private businesses are directed toward maintaining and strengthening community cohesion and that they do not propitiate, directly or indirectly, the elimination of the communities that constitute the District.

8. To foster the development of the community's social capital wherewithal, including the provision for continued training of community leaders and the establishment of collaboration and union ties among the communities that

constitute the District and the Cantera Peninsula through community organization.

9. To capitalize on the potential of the investment of public funds for the creation of job sources and entrepreneurial activities among District residents.

10. The long term minimization of involuntary community displacement.

11. To provide for resident participation in the economic development and the increase in land value that shall arise from public and private investments in the District.

12. To promote the integration of the communities into the urban, economic and social development of the San Juan Metropolitan Area.

With the application of these principles to the intervention processes, we shall achieve, in a joint effort, the rehabilitation of the Martín Peña Canal and the revitalization of its surrounding communities, social justice and economic development for the residents of these communities and society in general and the achievement of the Martín Peña Canal ENLACE Project's fundamental and interrelated goals.

Section 4.- Creation of the Martín Peña Canal ENLACE Project Corporation

The Martín Peña Canal ENLACE Project Corporation, hereinafter, "the Corporation," is hereby created as a juridical entity independent and separate from its officers and from any other public agency or government instrumentality, and from the Municipality of San Juan. This public corporation shall exist for a term of twenty (20) years, which may be extended for five (5) additional years by means of an Executive Order of the Governor; at the end of which it shall cease to exist. Once this term ends, the Legislature shall determine the procedures for the liquidation of the assets of the Corporation. Notwithstanding the above, as holder of the debt, the Corporation shall enjoy all the necessary powers to honor the same and to maintain its to here existence until its debt, of whatever type, is totally settled. The Corporation shall have the financial and operational capabilities needed to implement the public policy established in this Act and shall be governed by a Board of Directors in order to comply with the goals, duties, functions and prerogatives entrusted thereto, all of which shall operate on behalf of the public interest and benefit. In the discharge of its duties and functions, the Corporation shall serve the interests of society in general, ensuring that the present and future interests of the communities that constitute the District are taken care of adequately. Thus, the expression of public interest arising from the decisions of the Commonwealth and the Corporation in particular, shall legitimately

represent the general interest. The Corporation shall be excluded from the application of Act No. 5 of October 14, 1975, as amended, the Puerto Rico Public Service Personnel Act, and Act No. 164 of June 23, 1974, as amended, known as the "General Services Administration Act." The Corporation's Personnel Regulations shall guarantee the effectiveness of the principle of merit in the Corporation's personnel system.

The Corporation shall have the following objectives, among others:

1. To be the entity responsible for coordinating the implementation of all aspects of the ENLACE Project; including, without being limited to, housing development, infrastructure, the dredging and canalization of the Canal, as well as urban and socio-economic development. It may implement related projects and programs, contract third parties to develop them and coordinate with the public agencies for projects and programs within the District.

2. To guarantee mechanisms for citizen participation in the planning and execution of the ENLACE Project and promote community empowerment, leadership training and strengthening of the community-based organizations. To provide technical support when

necessary, and keep the residents and merchants informed about the development of the ENLACE Project and the participation mechanisms.

3. To promote the creation of strategic alliances with the private entrepreneurial sector and with bona fide nonprofit organizations.

4. To promote the greatest participation of the private sector in the development of the ENLACE Project, for which it shall stimulate investments, industrial and commercial development, individual and the collective citizen and business initiatives of the District and the Puerto Rican community in general.

5. To promote and make possible and empower the creation, improvement and strengthening of District and Cantera Peninsula resident enterprises and businesses located therein. To promote the contracting and subcontracting of community-based organizations, including community enterprises that meet the requirements and are able to execute programs and projects related to the ENLACE Project.

6. To guarantee the continuing participation of the citizens in the decision-making process and the

planning and execution of the ENLACE Project to allow the long term permanence of the communities that constitute the District, as well as fair and equal treatment in the family relocation processes needed to implement the project.

7. To carry out its duties as it achieves its full development, with trained personnel and a reduced structure, so that it does not lose its nature as an agile and efficient coordinating entity and does not become a heavy bureaucratic apparatus.

8. To seek innovative and assertive means for financing the development of the ENLACE Project, combining public and private resources toward such purposes.

9. To coordinate the appropriate attention toward the land ownership rights situation, according to the provisions set forth in this Act.

Section 5.- Board of Directors

(1) The Board of Directors of the Corporation shall consist of a minimum of eleven (11) persons of proven capability and leadership, of which six (6) shall be appointed by the Governor and five (5) by the Mayor of the City of

San Juan. Two (2) of the members appointed by the Governor and one (1) of the members appointed by the Mayor shall be appointed for four years; two (2) of the members appointed by the Governor and two (2) of the members appointed by the Mayor shall be appointed for five (5) years and two (2) of the members appointed by the Governor and two (2) of the members appointed by the Mayor shall be appointed for six (6) years; their successors and all additional members shall be appointed for six (6) years. By recommendation of the Board, the members may be increased up to fifteen (15), in which case the participation of community representatives shall be, as a minimum, forty-five (45) percent of the membership. One half of the new appointments shall be made by the Governor and the other half by the Mayor of San Juan. The members shall remain in office until their successors are appointed and take office. In case of a vacancy, prior to the expiration of the term of the incumbent, a successor shall be appointed for the remainder of said term. The initial members of the Board of Directors shall be appointed within a term of not more than forty-five (45) days after this Act is approved.

(2) The Board of Directors shall elect a Chairperson from among its members and appoint a Secretary of Records from among the personnel of the Corporation. No person shall remain in office as Executive Director of the Corporation or as Chairperson of the Board of Directors for a consecutive term of more than ten (10) years. The quorum for holding meetings and voting shall be the absolute majority of the existing positions.

(3) Members of the Board of Directors shall not receive compensation. The expenses they incur in the discharge of their duties shall be reimbursed pursuant to the regulations adopted by the Board of Directors. Members of the Board of Directors shall be governed by the Ethics in Government Act of the Commonwealth of Puerto Rico, but shall not be compelled to render the financial reports required by said Act, with the exception of public officers that are appointed to the Board, who are already required to render such reports, in which case they shall continue to be required to render them.

(4) Five (5) members of the Board of Directors (two (2) of the members appointed by the Governor and three (3) of the members appointed by the

Mayor), shall be residents of the communities that constitute the District or the Cantera Peninsula, and shall originate from three candidates that shall be nominated by the G-8 for each position. The community representatives must have been bona fide residents of the District or the Cantera Peninsula for a term of not less than (3) years prior to their appointment and shall not have held or sought to hold any elective public office for an equal term. While members of the Board, they shall not hold or seek any elective public office, and shall remain residents of the District or the Cantera Peninsula.

(5) Three (3) members of the Board of Directors (two (2) of the members appointed by the Governor and one (1) appointed by the Mayor), shall represent the private sector, at least one of them preferably from the private nonprofit sector. Private sector representatives may not hold or seek any elective public office during the years in which they are members of the Board, nor have any conflict of interests with the ENLACE Project. They shall have, among other things, social recognition for their past performance in the execution of programs and

projects tangential to the goals of the ENLACE Project, knowledge of, or familiarity with, the ENLACE Project and its implications, and demonstrate sensibility toward community development processes.

(6) Three (3) members of the Board of Directors (two (2) appointed by the Governor and one (1) appointed by the Mayor), shall represent the public sector, and may delegate their participation, with voice and vote, to capable representatives, who shall answer directly to the members for whom they stand in. Those representing the public sector shall have the following characteristics:

a. Knowledge of, or familiarity with, the ENLACE Project and its implications.

b. To be in a position, and have the authority, to make decisions and establish commitments on behalf of the central Government or the municipality, whichever may apply.

c. To be able to coordinate with the corresponding public agencies of the central Government or the

Municipality those actions that require the intervention thereof.

d. To be knowledgeable about governmental structure and institutional processes.

e. Must not be a candidate to any public elective office during the years of membership.

f. Must be sensible with respect to community development processes.

g. Must have academic studies or experience in one or more of the following areas as relevant to the implementation of the ENLACE Project: socio-economic development, urban development, environmental management and conservation, housing development, and planning.

(7) The members of the Board of Directors may be removed by the Governor or by the Mayor of San Juan, as the case may be, according to the source of their appointment, for just cause after charges preferred and the opportunity to be heard.

(8) The Board of Directors shall have the following responsibilities:

(a) To be responsible for the achievement of the objectives of the Corporation;

(b) To supervise the proper operations of the Corporation;

(c) To approve and adopt bylaws to govern the work, deliberations and execution of its functions in accordance with the provisions of this Act;

(d) To appoint an Executive Director of the Corporation and to appoint or authorize the appointment of its other officers and employees;

(e) To ensure through creative operating procedures that the primary responsibility for the success of the Martín Peña Canal development project considered in this Act falls upon the private sector, jointly with the public sector, and the communities that constitute the District;

(f) To manage the Fund for the Development of the Martín Peña

Canal ENLACE Project, created in Section 26 of this Act.

Section 6.- Powers

The Corporation shall have all the rights, powers and prerogatives provided by this Act or by the laws or programs whose administration or implementation is delegated in order to comply adequately with the public policy established herein, including, without limitation:

(a) To adopt its corporate seal;

(b) To sue and be sued;

(c) To execute any kinds of acts and contracts and agreements, including those related to goods and services;

(ch) To acquire and transfer property to any title;

(d) To acquire, build, improve, operate and maintain projects within the Special Planning District of the Martín Peña Canal, as well as any property related to such projects;

(e) To have officers and employees;

(f) To establish regulations for its organization and operations;

(g) To receive the services of the employees of public agencies, with the consent of said public agencies, to carry out any study, investigation or activity of the Corporation that is necessary or convenient for compliance with the purposes of this Act;

(h) To receive and accept funds and donations from any public agency of the Government of Puerto Rico, the Government of the United States of America, municipalities and nonprofit entities in order to achieve the purposes of this chapter and comply with the terms and requirements with respect to any funds or donations received;

(i) To procure and obtain from the public agencies any technical and financial assistance of any nature that it deems necessary in order to fulfill the functions of the Corporation;

(j) To have exclusive control over its property and activities and to decide the nature of and need for all its expenditures, and the manner in which they shall be incurred, authorized and paid;

(k) To establish the fees and charges to be collected for the use of the property it owns;

(l) To create by resolution the subsidiaries it deems convenient to carry out any of its functions, in the manner provided below;

(m) To lend or donate money to its subsidiaries and to purchase and sell or exchange stock, bonds or other obligations thereof;

(n) To lend money, with a secured mortgage, under the terms it deems convenient, to any developer that is organized to carry out developments in the District;

(o) To borrow money for any of its corporate goals, including, without limitation, the purpose to consolidate, reconsolidate, purchase, pay or cancel any outstanding bonds or other obligations issued or assumed by it, whose principal and interest are payable in whole or in part from the revenues of the corporate entity;

(p) To provide financial assistance of any kind, including incentives and subsidies or technical assistance to carry out developments in the District;

(q) To sell or discount, in public or private transactions, mortgages or other valuable titles under its control;

(r) To manage any of its projects in the manner to be determined by regulations, including, without it being understood as a limitation, the rental of housing or businesses units, placing them under a trust, and lending them for use under any title;

(s) To participate jointly with the public agencies and the residents of the District in the coordination of initiatives in the District;

(t) To participate jointly with the public agencies and the residents of the District in planning the integrated development of the lands that constitute the District, in accordance with the provisions of the laws and regulations in effect;

(u) To enter, with prior permission of its owners, holders or representatives, any lands, bodies of water or property in order to carry out measuring, surveys or studies for the purposes of this Act, and if the owners, holders or representatives, refuse to grant their permission to enter the lands, bodies of water or property for the aforementioned purposes, any judge of the Court of First Instance shall issue an order to authorize this, upon presentation of a sworn statement

declaring the Corporation's intention of entering the lands, bodies of water or property described in the sworn statement, for the purposes stated in this provision and in the case that no known owners, holders or representatives appear, the Corporation, through its officers or employees, may enter without any permission;

(v) To carry out all actions or do all things necessary or convenient to execute the powers conferred upon the Corporation by this Act or by any other law of the Puerto Rico Legislature, exercising its public and essential government functions with respect to the integrated development of the ENLACE Project and in joint participation with other public agencies in the coordination of efforts made with respect to such development, for which the execution of the powers and faculties conferred thereto by this Act shall at no time have the effect of vesting the Corporation with the characteristics of a private entity;

(w) To participate in the planning, design and construction of the buildings, works, structures, infrastructure and others necessary for the integrated development of the ENLACE Project;

(x) To solicit, accept and obtain any funds, donations, usufruct, trusts or technical or economic assistance from the federal government, the government of the Commonwealth, including its instrumentalities and political subdivisions, or from private sources, in order to carry out the purposes of the Corporation and the purposes provided in this Act; to sponsor projects initiated under federal laws or programs; to act as a delegating or delegatory agency; and to supervise the use of the funds thus obtained;

(y) To issue and sell participating bonds as a method for raising funds for the Corporation, which shall be sold among the communities and private enterprises, and the returns of which, in interest, shall be exempted from the payment of income tax and all types of taxation.

Notwithstanding the aforementioned in this Section, the actions carried out by the Corporation, or any other office or instrumentality created pursuant to this Act, may not be in contravention to the public policy of the Government of the Commonwealth of Puerto Rico, its offices, public agencies, instrumentalities or public corporations, as provided by law.

Section 7.- Exemptions

The Corporation or any of its subsidiaries, shall be exempted from all types of taxes, duties, imposts, excise taxes or fees, including those levied or to be levied on permits, by the Commonwealth of Puerto Rico or any political subdivision thereof, including all its operations, personal or real property, and its capital, income and surplus.

The Corporation and its subsidiaries shall also be exempted from the payment of all types of duties or imposts required by law for the prosecution of legal proceedings, the issue of certifications in the offices and dependencies of the Government of the Commonwealth of Puerto Rico and its political subdivisions and for executing public documents and their registration in any public register in Puerto Rico.

Furthermore, private sector juridical or natural persons whose main activity is the development, management or operation of projects that further the goals established in the Land Use Plan and the Martín Peña Canal Special Planning District Integrated Development Plan, as specified by the Corporation, shall be exempted from all types of taxes, duties, imposts, excise taxes or fees, including those levied or to be levied on permits, by the Commonwealth of Puerto Rico or any political subdivision thereof, on all its operations, personal or real property, and its capital, income and surplus, as provided in the dispensation executed to such effects by the Secretary of the Treasury of the Commonwealth of Puerto Rico. It is clearly established herein that such projects shall be

exclusively of a social nature in order to promote the rehabilitation of the District. The Board of Directors of the Corporation shall issue an official certification identifying the project as eligible for exemption by virtue of this provision. The exemption provided in this paragraph shall be limited to the property, capital, income or surplus generated by or used in the project identified in the Corporation's certification. Juridical or natural persons who benefit from the exemption provided herein may only claim the portion of the exemption corresponding to their participation in the project. The Secretary of the Treasury shall establish by means of regulations, the procedure to request the certification pursuant to this paragraph, as well as the criteria to be considered to determine whether an applicant qualifies for the benefits established in this paragraph. Said regulations shall be approved within not more than one hundred (100) days after the appointment of the initial members of the Board of Directors. The exemptions provided in this Section shall be reviewed every three (3) years in terms of their cost-effectiveness. The Department of the Treasury shall perform the evaluation, in consultation with the Corporation, and with the collaboration of the Office of Management and Budget, the Municipality of San Juan, the Municipal Revenues Collection Center and all other public agencies involved.

Section 8.- Funds, Disbursements

All the monies of the Corporation shall be entrusted to recognized depositaries of the funds of

the Government of the Commonwealth of Puerto Rico. The accounts shall be registered in the name of the Corporation. Disbursements shall be made according to the norms and regulations of the Corporation.

Section 9.- Accounting System

The Corporation shall establish an accounting system that includes internal and external audits for the adequate control and register of all its operations. The Corporation's accounts shall be kept in such a manner that they may be itemized by activity.

Section 10.- Debts and Obligations

The debts and obligations of the Corporation shall not be debts and obligations of the Commonwealth of Puerto Rico or its political subdivisions, except that the Commonwealth Government may assume, endorse, reinforce, guarantee or otherwise assume responsibility or answer for debts of the Corporation arising from lines of credit granted or awarded by the Government Development Bank or any other public or private entity.

To maintain a sound administration and for the Government Development Bank to maintain its supervision of loan margins and fiscal health, the Corporation is hereby compelled to remit annual financial statements to the Government Development Bank, as well as any other document

that the Government Development Bank deems necessary.

Section 11.- Immunity, Limitations of Civil Liability

Neither the Corporation nor its members as individuals shall incur financial liability for any action taken in the discharge of their powers, provided that their actions have not been intentional, illegal, for self-benefit or knowingly damaging.

Section 12.- Support from the Commonwealth Public Agencies

The public agencies of the Commonwealth of Puerto Rico are hereby directed to offer support and cooperation to the Corporation, including the special assignment of personnel and the transfer of resources and property deemed pertinent. The Corporation may hire personnel regularly employed in any public agency, department, instrumentality, public or municipal corporation, municipality, municipal consortium, or political or administrative subdivision of Puerto Rico, subject to the consent of the corresponding appointing authority, to render services outside of their workday, without being subject to what is otherwise provided in the Political Code of Puerto Rico.

All public agencies of the Commonwealth of Puerto Rico shall contribute to the development of their corresponding projects and programs identified in the Integrated Development Plan and the Land

Use Plan of the District to make viable the implementation of the ENLACE Project, and shall collaborate with and support the activities, initiatives and projects furthered by the Corporation, according to their responsibilities, functions and capabilities, and in close coordination with the Corporation. In the preparation of their Capital Improvements Program, the public agencies shall include their corresponding projects and programs out of those identified in the Integrated Development Plan and the Land Use Plan of the District, whose development is directed through this Act, according to their possibilities and the priorities to be established in coordination with the Corporation.

The public agencies of the Commonwealth of Puerto Rico shall favor, facilitate and empower the creation, improvement and strengthening of enterprises and businesses of residents of the District and the Cantera Peninsula, that are located therein. They shall also encourage consultants and contractors in charge of the development of programs and projects to employ residents of the District and the Cantera Peninsula and/or to subcontract community enterprises to perform the work for which they are qualified, using mechanisms such as adjusting the execution of programs and projects to a scale that favors the participation of these enterprises. To achieve the self-management, empowerment and community development goals stated in the statement of public policy of this Act, the public agencies that develop projects and programs in the District and the Cantera Peninsula

shall resort, as a first option, to the Registry of Bidders which shall be kept by the Corporation, as provided by this Act. Whenever possible, the execution of the programs and projects shall be adjusts to a scale that furthers the participation of community enterprises through contracts or subcontracts. In case the project cannot be divided or its scale adjusted, then it shall be required to include provisions to ensure that the resources and enterprises in the Register of Bidders are considered by the contracted firms as a first option for the works or services to be subcontracted in the contracts that are to be awarded for works and services to be provided in the District and the Cantera Peninsula.

The Company for the Integrated Development of the Cantera Peninsula shall be covered by the provisions in this Section.

Section 13.- Support from the Municipality of San Juan

The Municipality of San Juan shall give support and cooperation to the Corporation, including the special assignment of personnel and the transfer of equipment, funds and property. It shall promote the contracting of community-based organizations, including community enterprises that meet the requirements established in this Act, and the applicable regulations or laws, and which are capable of executing the programs and projects related to the ENLACE Project, among others. It shall also encourage consultants and contractors in charge of the development of programs and projects

to employ residents of the District and the Cantera Peninsula and/or to subcontract community enterprises to perform the work for which they are prepared, using mechanisms such as adjusting the execution of programs and projects to a scale that favors the participation of these enterprises. In the development of projects and programs in the District and the Cantera Peninsula, the Municipality shall resort, as a first option, to the Registry of Bidders which shall be kept by the Corporation, as provided by this Act. Whenever possible, the execution of the programs and projects shall adjust to a scale that furthers the participation of community enterprises through contracts or subcontracts. In case the project cannot be divided or its scale adjusted, then it shall be required to include provisions to ensure that the resources and enterprises in the Register of Bidders are considered by the contracted firms as a first option for the works or services to be subcontracted in the contracts that are to be awarded for works and services to be provided in the District and the Cantera Peninsula.

Any municipal officials or employees transferred or appointed to a position in the Corporation shall maintain the status and rights they had at the time of joining the service of the Corporation pursuant to the personnel laws in effect and shall also maintain any right to which they are entitled in any retirement system or pension fund prescribed by law for officers and employees holding similar positions in the Municipal Government.

Section 14.- Land Use Plan and Integrated Development Plan

The Highway and Transportation Authority shall draft a Special Land Use Plan and an Integrated Development Plan for the Special Planning District of the Martín Peña Canal, as designated by the Planning Board's Resolution of May 17, 2002, taking into consideration the conservation easements and natural reserves established in the District. The plans shall be made by using a participative planning methodology, as provided in said Resolution, and shall include the environmental assessments required by the Environmental Public Policy Act. The Authority shall submit both plans (jointly or separately) through the Secretary of the Department of Transportation and Public Works for simultaneous evaluations by the Planning Board and the Environmental Quality Board. The Environmental Quality Board shall determine within not more than twenty (20) days (extendable with the consent of the Planning Board in consultation with the Department and the Authority) on each Plan's compliance with the Environmental Public Policy Act and shall notify the Planning Board thereof within said term. Final approval by the Planning Board shall take place within not more than sixty (60) days after the corresponding determination is notified to the Environmental Quality Board, provided that this is a non-significant environmental impact, or any other favorable determination that applies pursuant to the Environmental Public Policy Act. The Boards shall

carry out all the joint legal processes possible to ensure a speedy evaluation of the Plans and their approval and effectiveness within not more than one hundred sixty (160) days after this Act takes effect.

Once the Planning Board adopts the Special Land Use Plan and the Integrated Development Plan, the Planning Board may exempt the Corporation from submitting particular consultations, pursuant to the provisions in said plans. The Land Use Plan shall be prepared in accordance with the Territorial Ordinance Plan of the Municipality of San Juan and shall become one of the Area Plans of said Territorial Ordinance Plan of the Municipality of San Juan. The Corporation shall take charge of the revisions to the Land Use Plan and the Integrated Development Plan that are made during their effectiveness, and shall submit the amendments to the Planning Board for its consideration and approval. When a conflict arises between any plan, regulation or norm, the governing policies and norms adopted in the Land Use Plan and the Integrated Development Plan shall prevail over any law, plan or regulation regarding the use of the land in the District, unless otherwise provided by the Planning Board for the general interest. In case any part of the Land Use Plan or the Integrated Development Plan approved by the Planning Board is contrary to any provision of the Territorial Ordinance Plan of the Municipality of San Juan, the Corporation shall notify the Planning Board thereof so that the latter, with prior consultation with the Municipality, may approve and indicate the

modifications to said Ordinance Plan. The Board shall make said modifications in accordance with the provisions of its Organic Act, the Autonomous Municipalities Act and the Uniform Administrative Procedures Act, but the approval and effectiveness of the modifications to the Ordinance Plan shall not delay the effectiveness of the Plans for the District.

Any authorization, permit or endorsement (including any variations and exceptions to the norms) of the public agencies, especially of the Regulations and Permits Administration, the Municipality of San Juan (including, without limitation, its Territorial Ordinance and Permits Offices), the Departments of Transportation and Public Works and Natural and Environmental Resources, the Environmental Quality Board and the Planning Board (including, without limitation, site or location consultations) in the District shall only be granted when they are in accordance with the provisions of the Land Use and Integrated Development Plans of the District. The corresponding public agency shall consult the Corporation in writing on its position with respect to the proposed action, and whether or not the Corporation endorses the action and the conditions that the Corporation deems reasonable in order to proceed with the action. The Corporation shall have a term of twenty (20) days (extendable only with the consent of the corresponding public agency) to provide its comments in writing, and if no comments are provided, it shall be understood that the Corporation has no interest in stating its position.

Section 15.- Company for the Development of the Cantera Peninsula

The Corporation and the Company for the Development of the Cantera Peninsula shall coordinate the works, in order to advance the common goal of achieving the dredging and canalization of the Martín Peña Canal.

Section 16.- Transfer of Lands

The public agencies, as defined in this Act, that manage, hold in custody, have dominion over, lease or own lands in the District shall be understood through this Act as having transferred the respective title to the Corporation after one hundred sixty (160) days as of the effectiveness thereof. In the case of lands of public domain or patrimony, the ownership rights thereof through this Act shall remain vested upon the Corporation, with the exceptions established below with respect to the Maritime-Terrestrial Zone.

Section 17.- Maritime-Terrestrial Zone

The Secretary of the Department of Natural and Environmental Resources, pursuant to Sections 5(h) and 6(c) of the Organic Act of the Department of Natural and Environmental Resources (Act No. 23 of June 20, 1972, as amended), shall carry out within or before ninety (90) days as of the date of approval of this Act, an official delimitation of all public domain lands related to the maritime-terrestrial zone of the District. In the graphic depiction of said delimitation,

the Secretary of the Department of Natural and Environmental Resources shall show the alignment projected by the United States Army Corps of Engineers for the construction of the Martín Peña Canal, including the corresponding surveillance and salvage easements established by the corresponding provisions in effect of the "*Ley de Puertos para la Isla de Puerto Rico de 1886*" [Puerto Rico Ports Act of 1886], as well as the Conservation Strip determined in the Land Use Plan adopted by the Planning Board for this Project. The Conservation Strip shall take into account the natural reserves and conservation easements previously established in the District. Once this official delimitation and the graphics established in this Section are carried out, all the lands north and south of the delimitation line of the Conservation Strip shall be declared patrimony of the Commonwealth under the ownership rights of the Corporation. It shall be understood that as of one hundred sixty (160) days after this Act takes effect, the lands over which the exercise of the granting of titles to the Corporation, whether registered or not, has not been performed, shall be transferred thereto. The Corporation shall create the Land Trust with these transferred lands, as provided by this Act, which it shall manage on behalf of the communities of the District, as provided in the Integrated Development Plan and the Land Use Plan of the District. The canal to be built, as well as the surveillance and salvage easements and conservation strip, shall be kept as public domain property under the custody and administration of the Secretary of

the Department of Natural and Environmental Resources.

Section 18.- Ownership Rights

The Department of Housing, with the advice of the Department of Natural and Environmental Resources, shall conduct the corresponding legal procedures to evaluate, recognize and, wherever necessary and convenient, to provide for the registration of the ownership rights of the residents of the communities of the District, not later than one year after this Act is approved. The Department of Housing shall conduct a study on the legal situation of the rights attributable to all District residents whose dwellings are located within the lands defined as public domain in accordance with the delimitation required in Sections 16 and 17 of this Act. This title search shall serve as the basis for establishing the procedures for the recognition of ownership rights of the families that shall be relocated as part of the implementation of the ENLACE Project, including the dredging and canalization project of the Canal and the implementation of the Land Use Plan and the Integrated Development Plan of the District.

Section 19.- Martín Peña Canal Land Trust

The Martín Peña Canal Land Trust, hereinafter the "Land Trust," is hereby created, which shall consist of all the lands transferred to the Corporation, in accordance with this Act, especially pursuant to Sections 16 and 17 herein, of which the Trust shall be the custodian. The Corporation shall

prepare regulations to govern the operations of the Land Trust within one hundred (100) days after the appointment of the members of the Board of Directors of the Corporation. Said regulations shall specify the manner in which the lands of the Land Trust shall be used and the participation of the Corporation and all other public and private entities in the process of identification of the lands eligible to become a part of the Land Trust. It shall also specify the mechanisms for the appointment of the members of the Board of Trustees of the Land Trust.

The Board of Trustees of the Land Trust shall function as the fiduciary agent of the Trust. This shall not impede the transfer of the custody of the entrusted property to any Trust institution incorporated under the laws of the Commonwealth of Puerto Rico, which shall act as custodian of said property and its returns under terms that are compatible with the goals and provisions of this Act. The Board of Trustees shall have the faculties and powers expressly conferred to trustees in Sections 834 to 874, inclusive, of the Civil Code of Puerto Rico. The Land Trust is hereby created with independent juridical personality, and its Board of Directors shall have representation of the residents delegated by the G-8. The funds of the Land Trust shall be kept separately from other funds under the custody of the Corporation and maintained where the Board of Directors of the Trust so determines, pursuant to the faculties granted through this Act and the regulatory provisions adopted pursuant thereto. The Land Trust shall have the ownership rights to the land, and may

only sell or transfer the construction rights; or long term leases may be granted with inheritance rights. The owners of property on lands of the Trust may own the structure exclusively, but not the land on which it is built. The residents of the lands owned by the Trust shall be the trustees.

(a) The Land Trust shall have the following goals:

(1) To contribute toward the solution of the ownership rights problem of many District residents through collective land-holding.

(2) To handle the physical or economic displacement of the low income residents that arises from the urban reconstruction projects with fairness, avoiding the disintegration and displacement of the community.

(3) To guarantee affordable housing in the District.

(4) To acquire and possess lands on behalf of the community, thus increasing local control over the land and avoiding absentee owner decision-making.

(5) To make possible the participation of the residents and

the strategic investment of the private sector, and redistribute with fairness the increase in land value through the participating bonds mechanism, diversifying the sources of income of the families and reinvesting in the District.

(6) To make possible the reconstruction and valuation of the urban spaces, pursuant to the public policy established by this Act, and the development and use of land plans adopted by the Planning Board for the District.

(7) To recover the investment of the Commonwealth in the urban reconstruction of the District to create a revolving fund that allows reinvestment in the District or in other locations with similar purposes.

(b) To comply with these goals, the Trust may:

(1) Make the parceling convenient to the general interest in accordance with the Land Use Plan and the Integrated Development Plan, and impose restricting conditions when necessary.

(2) Acquire empty lots and lands in order to build affordable housing, whether through the public nuisance process or through eminent domain.

(3) Acquire ruined structures and debris to build affordable housing, whether through the public nuisance process or through eminent domain.

(4) Acquire the public land in the District by means of ownership transfer from the public entity to the Land Trust for the purpose of carrying out the Integrated Development Plan.

(5) Acquire the easement lands and all the remnants produced by urban improvements.

(6) Acquire by means of ownership transfer the lands and lots of public origin determined by the study directed in Section 16 of this Act and to protect the patrimonial property of Puerto Rico in the District.

(7) Ensure that all the lands of the Land Trust are registered or submitted to the corresponding

Property Register, and prepare the necessary documents such as the registration blueprints.

(8) Effectively manage the lands with fairness on behalf of the residents of the District.

(9) Render annual reports and all the documents required by the Commonwealth for corporations.

(10) Appraise the land at the time of its transfer or acquisition and authorize, subscribe and issue participation bonds on the land value to the Commonwealth, based upon the public investment in the improvements; to the citizens by means of the exchange of their land by shares, in accordance to its weighted average value by equity criteria or its contribution to the planned development; and to other residents by means of payment plans to be compensated with the interest corresponding to the participation bonds issued. These shares shall be granted in accordance with their weighted average value by equity criteria. The Land Trust may also grant participation bonds to individual

non-resident citizens and entrepreneurs for their investment and contribution to the planned development. Part of the returns on the public sector shares shall be reinvested in the District. Bonds issued in favor of the citizens shall receive a fixed interest established according to the market rates in effect and payable as shall be provided. The Land Trust shall have preferential rights to the reacquisition of shares. There may be a limit for the transfer or negotiation of the shares among third parties. Those who own shares may use them as collateral.

The Corporation shall prepare a public report on the activities of the Land Trust every one hundred eighty (180) days as of the creation thereof. It shall indicate, among others, the financial situation of the Trust, as well as any other matter that should be made public as determined by regulation.

Section 20.- Relocation alternatives

In the process of obtaining the easements to carry out the works related to the ENLACE Project, the Corporation and/or public agency in charge of the process shall make sure it maintains the highest community cohesion, also providing for, as may be

possible, the offering of relocation alternatives within the District and the Cantera Peninsula to those families, businesses and nonprofit organizations that wish to remain within the area, as established in the Land Use Plan and the Integrated Development Plan. The relocation alternatives shall be designed with the active and appropriate participation of the citizens. The affected families shall be advised of their rights and responsibilities sensibly and sufficiently in advance, ensuring full compliance with the laws that protect them.

Section 21.- Compensation for moving and relocation for those affected by the projects in the District

In determining the benefits of relocation and moving, the Corporation or the public agency carrying out the process of property acquisition shall provide uniform treatment, so that all families, businesses and nonprofit organizations in the same situation receive similar benefits, notwithstanding the source from which the money for financing the relocation process originates. In those processes of acquisition and relocation financed with funds of the Commonwealth of Puerto Rico, within the District and the Cantera Peninsula, the occupants of the properties acquired shall be compensated pursuant to what is set forth in the "Uniform Relocation Assistance and Real Property Acquisition Policies Act" of 1970, as amended, P.L. 91-646; 42 U.S.C. 4601 et seq.

Section 22.- Register of Residents, Businesses and Nonprofit Organizations of the Special Planning District of the Martín Peña Canal

In the first one hundred twenty (120) days after the appointment of the members of the Board of Directors, the Corporation shall update the register of residents and businesses that occupy buildings in the District made by the Authority as part of the Census conducted in 2002, also adding the nonprofit organizations that occupy buildings. The intention of updating this register and its purpose shall be published in newspapers of general circulation and announced through posters and fliers. Entitled to compensation for relocation and moving, in accordance with the provisions of this Act shall be all families, businesses and nonprofit organizations that have occupied the acquired dwelling for (a) not less than one hundred eighty (180) days immediately prior to the date on which the register of families, businesses and nonprofit organizations is closed, in the case of buildings located within the Canal dredging impact zone, the conservation strip, the peripheral thoroughfare or within the street blocks; or, (b) not less than one hundred eighty (180) days immediately prior to the date on which the Corporation and/or the public agency notify the offer of fair compensation for the acquisition of the property in writing for the other buildings. The Corporation shall have access to all the information held by the Department of Transportation and Public Works and the Highway and Transportation

Authority that shall allow it to keep the Register updated.

Section 23.- Community Development

The Corporation, in coordination with the Office for Socioeconomic Financing and Self-Management, shall perform functions directed to promoting the social and economic development of the District, so that community and physical developments advance concurrently, and in accordance with the following goals:

(1) To systematically direct and use the economic activity to generate internal capacity and development in the District.

(2) To maximize the internal circulation of the income generated within the District to increase its multiplier effect and to contribute toward the accumulation of internal capital through the creation of community financing mechanisms.

(3) To provide continuing support to the integration and participation of residents in the economic activity, whether as potential entrepreneurs, operating entrepreneurs, employees or owners of capital assets.

(4) To use all types of interventions from the public and private sectors in the District in order to develop the social capital and internal institutions of the community.

To comply with these goals, the Corporation, in coordination with the Office for Socioeconomic Financing and Self-Management, shall:

(1) Support residents in their economic endeavors, by providing, among others, services such as:

a. entrepreneurial training for the establishment of profit and nonprofit resident-owned enterprises and self-employment;

b. employment training;

c. referrals to jobs and employment opportunities;

d. revolving fund for financing;

e. portfolio of contracts that provide business opportunities for resident-owned enterprises;

f. list of works, projects and programs that may be performed by community enterprises;

g. operational and administrative support for the District's enterprises;

h. orientation for housing owners;

i. mechanisms to increase the amount of resident-owned capital goods;

j. mechanisms, procedures and guidelines to define, facilitate and supplement the establishment of joint ventures in the District.

(2) Support the development of the community social capital assets providing, among others, services such as:

a. support and coordination of efforts for consolidating and strengthening community-based organizations and the G-8, including leadership training and the creation of support networks;

b. the creation of formal and informal instances and spaces for the residents to share and interact;

c. the design and implementation of mechanisms to support the

development of a culture of appreciation and attachment toward the community;

d. the creation of community support networks for individuals, families, and the elderly who are affected by the Project or who have special needs;

e. the design and implementation of a system of indicators to evaluate the public, environmental, economic and social health in the District.

Section 24.- The Register of Businesses and Bidders of the Martín Peña Canal

The Corporation shall prepare the Register of Businesses and Bidders of the Martín Peña Canal in the first one hundred sixty (160) days after the appointment of the initial members of the Board of Directors. Said Register of Bidders shall include all the community enterprises operating under the provisions of the applicable laws and regulations. The Register of Bidders shall be updated at least once each year.

Section 25.- Creation of the Office of the Martín Peña Canal ENLACE Project

It is hereby directed to create the Office of the Martín Peña Canal ENLACE Project in the

Department of Transportation and Public Works and the Highway and Transportation Authority as the entity responsible for the coordination and implementation of all the stages of the ENLACE Project. The office of the ENLACE Project shall be in effect, operationally, until all the processes of transition, creation and operations of the Corporation are completed.

Section 26.- Fund for the Development of the Martín Peña Canal ENLACE Project

A capital fund is hereby created for investments in and the development of the District, with no restrictions on the nature of the projects established by Act No. 3 of October 8, 1987. The fund shall receive appropriations from the Government of the Commonwealth, other public funds, including, among others, capital improvements, other state, federal and municipal funds, public corporations, departments and other public instrumentalities appropriated or obtained thereto, and from contributions made thereto by private sector individuals and entities. This fund shall be administered by the Board of Directors of the Corporation, which may solicit, accept and receive capitalization contributions donated thereto and may also receive capitalization funds from any natural or juridical person, and any private or government entity, that are covered into the Fund. The Board of Directors shall render a report on the uses and projects carried out with said funds to the Governor and to both Legislative Chambers on or before March 31 of each year.

The Office of Management and Budget is hereby directed to transfer to the Fund the full amount of items budgeted for the development of the ENLACE Project appropriated to the public agencies (as defined in this Act, except for the municipalities. The Highway and Transportation Authority is hereby authorized to transfer to the Fund the budgeted items intended for the development of the ENLACE Project.

Annual recurring appropriations to be charged against the General Fund shall be appropriated to the Fund for the Development of the Martín Peña Canal ENLACE Project, which shall be made in accordance with the work plan and budget presented by the Corporation and to the extent that the Corporation justifies the use of the monies from year to year. Said appropriations shall be contemplated in the General Expense Budget of the Government.

The full amount of the monies covered into the Fund shall be used for the purposes provided by this Act.

Section 27.- Tax Incentives

The following tax benefits shall be granted to the entities that contribute to the Corporation and the Fund for the Development of the Martín Peña Canal ENLACE Project:

(a) All donations made to the Corporation shall be treated as donations made to educational entities, pursuant to Act

No. 120 of October 31, 1994, as amended, for purposes of the limitations on donations;

(b) Interest generated by the bonds issued by the Corporation shall be exempted from the income tax levied by Act No. 120 of October 31, 1994, as amended;

(c) The accelerated depreciation method shall be allowed for the recovery of the cost of the investment;

(d) Every business or industry established or to be established in the District shall be entitled to an additional deduction for the salaries paid for purposes of the calculation of the income tax equal to five (5) percent of the applicable minimum salary of each new job created after the approval of this Act. This deduction shall be in addition to any other granted by any law and shall extend for a term of five (5) years.

To be entitled to the deduction granted by this subsection, it shall be necessary that the newly created job:

(1) does not eliminate or substitute any job that existed prior to the approval of this Act;

(2) is a full-time job of not less than thirty-five (35) hours per week; and

(3) is held by a District resident for a continuous term of not less than six (6) months within the taxable year, except for those businesses or industries that, due to their nature, are seasonal or temporary.

These tax incentives shall be evaluated every three (3) years as of the date of effectiveness of this Act in terms of cost-effectiveness. The evaluation shall be made by the Department of the Treasury, in consultation with the Corporation and with the collaboration of the Office of Management and Budget, the Municipality of San Juan, the Municipal Revenues Collection Center and all other public agencies concerned.

Section 28.- Bonds

In addition to the powers granted to the Corporation by this Act,

(a) The Corporation is hereby authorized to issue bonds from time to time for the amounts of principal that in the judgment of the Corporation are necessary to provide sufficient financial resources for the total or partial payment of the cost of any project or projects; for the payment of the interest on bonds of the Corporation for the

period it determines; for the creation of reserves to guarantee said bonds, and for the payment of other expenses of the Corporation, including the costs of the project that are incidental, necessary or convenient to carry out its purposes or exert its corporate powers, with the exception of the regular operational expenses of the Corporation. Bonds issued by the Corporation may be payable from the total amount or a part of the gross or net income and other income derived by the Corporation under the clauses of a financing contract with regard to any project, all as provided in the Trust contract whereby the issue of bonds is authorized. The principal and interest on bonds issued by the Corporation may be guaranteed through the total lien or a part of any income of the Corporation and may be guaranteed by the assignment of any financing contract with regard to any project or part thereof. The resolution or resolutions authorizing the issuing of bonds or the Trust contract guaranteeing the same may contain provisions that shall be a part of the contract with the holders of the bonds issued under said resolution or resolutions, with regard to a guarantee and the creation of a tax on the income and assets of the

Corporation; to the creation and maintenance of redemption and reserve funds; to the limitations with respect to the purposes for which the product of the bonds may be used; to limitations with respect to the issue of additional bonds; to limitations with respect to the introduction of amendments or supplements; to the resolution or resolutions or the contract of the trust; to the granting of rights, faculties and privileges and to the imposition of obligations and responsibilities upon the trustee under any trust contract; to the operation and maintenance of projects; to the fixing of fees, rent and other charges for the use and occupation of any project or its operation; to the rights, faculties, obligations and responsibilities that shall arise in the event of noncompliance with any obligation under said resolution or resolutions or the trust contract, or with respect to any rights, faculties and privileges conferred upon the holders of the bonds as guarantee thereof to increase the salability of the bonds.

(b) The bonds may be authorized by resolution or resolutions of the Corporation. They may be in one or more series, have a date or dates, become due within a term or terms that

do not exceed fifty years as of their respective dates of issue, and earn interest at a rate or rates that do not exceed the maximum rate allowed by law at that time. The bonds may be payable at a place or places, whether within or outside of the Commonwealth of Puerto Rico, of a denomination or denominations and in a form, whether coupons or registered; have register or conversion privileges; be executed in such a manner, payable by means of payment and subject to redemption terms, with or without premium; provide for the replacement of mutilated, destroyed, stolen or lost bonds; authenticated in a manner and comply with those conditions and contain those terms and conditions as the resolution or resolutions may provide. The bonds may be sold in public or private sales for the price or prices determined by the Corporation; provided, however, that the financing bonds may be sold or exchanged for outstanding Corporation bonds under the terms that, in the opinion of the Corporation, best serve its interests. Notwithstanding the form and according thereto, and in the absence of a stated disclaimer on the face of the bond to notify that it is not negotiable, all the bonds of the Corporation,

including any coupons pertaining thereto, shall have at all times, and it shall be understood that they have, all the characteristics and incidents (including negotiability) of negotiable instruments under the laws of the Commonwealth of Puerto Rico.

(c) The proceeds of the sale of the bonds of each issue shall be used to defray the cost of the project or projects or a part or parts thereof, for which the aforementioned bonds have been issued, and shall be disbursed in the form and under the restrictions, if any, that the Corporation sets forth in the Trust Contract that guarantees said bonds. If the proceeds of the bonds of any issue turns out to be less than the cost, due to any increase in construction costs or to an error in the estimates or any other reason, additional bonds may be issued in the same form to cover the amount of said deficiency, and unless otherwise provided in the Trust Contract, it shall be considered that said bonds are of the same issue and shall be paid from the same funds without giving any preference or priority to the bonds issued originally.

(d) Bonds may be issued under the provisions of this Act without obtaining consent from any department, division,

commission, board, body, bureau, or public agency of the Commonwealth of Puerto Rico, with the exception of the Government Development Bank for Puerto Rico (which shall intervene in cases in which the laws in effect expressly so provide, or at the request of the Corporation or the Trust), without any other procedure or any condition or matter other than the procedures, conditions and matters specifically required by this Act and the provisions of the resolution authorizing the issue of said bonds or the trust contract that guarantees them; Provided, however, that the provisions of Act No. 272 of May 15, 1945, as amended, shall apply.

(e) The bonds of the Corporation that are signed by the officers of the Corporation in the exercise of their office on the date of the signing thereof shall constitute valid and unavoidable obligations, even when prior to the delivery and payment of such bonds any or all of the officers whose signatures or facsimiles of signatures appear thereon have ceased to be officers of the Corporation. The validity of the authorization and issue of the bonds shall not depend upon or be in any way affected by any procedure concerning the construction, acquisition, extension or improvement of the project

for which the bonds are issued, or by any contract entered into with respect to said project. Any trust contract that guarantees the bonds may provide for any of said bonds to include an annotation stating that it was issued pursuant to the provisions of this Act and any bond that includes said annotation under the authority of such trust contract shall be considered to be final, valid and issued in accordance with the provisions of the Law. Neither the Corporation nor any person executing the bonds shall incur personal liability for such bonds, nor shall they be subject to any civil liability for the issue of said bonds. The Corporation is hereby authorized to purchase any outstanding bonds issued or assumed by it with any funds available for such purpose.

Section 29.- Trust Contract

At the Corporation's discretion, any bonds issued under the provisions of this Act may be guaranteed by a trust contract by and between the Corporation and a corporate trustee, which may be a Trust Corporation (trust company) or a banking institution with the faculties of a Trust Corporation (trust company) within or outside of the Commonwealth of Puerto Rico.

It shall be legal for any banking institution or trust corporation incorporated under the laws of the Commonwealth of Puerto Rico, the United States of America or any state of the United States of America to act as depositary of the proceeds of the bonds, income or other monies to execute indemnity bonds or to offer as guarantee the securities required by the Corporation. In addition to the above, the trust contract may contain all the provisions that the Corporation deems reasonable and appropriate for the security of the bondholders.

Section 30.- Agreement of the Commonwealth of Puerto Rico with the Bondholders

The Commonwealth of Puerto Rico hereby agrees with the holders of any bonds issued under this Act and with the persons or entities that establish contracts with the Corporation in accordance with the provisions of this Act, that it shall not limit or alter the rights herein conferred onto the Corporation until said bonds and the interest thereon are totally paid off and said contracts are totally complied with and executed by the Corporation; provided, however, that none of the provisions herein shall affect or alter said limitation if adequate measures for the protection of said bondholders of the Corporation or those who have entered into such contracts with the Corporation are provided by law. The Corporation, as agent of the Commonwealth of Puerto Rico, is hereby authorized to include this agreement by the Commonwealth in the aforementioned bonds or contracts. However, nothing established in this Section shall have the

effect of altering what is provided in Section 10, which sets forth that the debts and obligations of the Corporation shall not be debts or obligations of the Commonwealth of Puerto Rico nor of its political subdivisions, nor shall they have the effect of encumbering the loan margin of the Commonwealth of Puerto Rico.

Section 31.- Income of the Corporation

The fees, rent, charges and all other income earned by the Corporation from the project related to the bonds of any issue, except for the part that may be necessary for paying the costs of the Corporation incurred in said project and to provide reserves, if any, that may be provided in the trust contract that guarantees said bonds, shall be deposited regularly in a reserve fund for the payment of the debt service, as provided in the trust contract, which is hereby offered to guarantee the payment of the principal and interest on said bonds as they become due and the call price or purchase price of bonds withdrawn due to redemption or purchase, as provided. The guarantee shall be valid and binding from the time in which it is constituted. The fees, rent, charges and other income and monies offered in guarantee and those received afterwards by the Corporation shall immediately be subject to lien without the need to physically deliver them or the need for any other act, and said lien shall be valid and binding and shall prevail against any third party that holds any kind of claim against the Corporation for damages or breach of contract or any other reason, regardless of whether or not said third party has been notified of

this matter. Neither the trust contract nor the financing contract for which a collateralization agreement is formalized or for which the rights of the Corporation over any income are assigned, need to be filed or registered to finalize the lien over the same against any third party, except in the files of the Corporation. The use and disposition of the monies to the credit of the redemption fund for the payment of the debt service shall be subject to the provisions of such a trust contract. The referred redemption fund for the payment of the debt service shall be a fund for such bonds without distinction or priority of one over the other, unless otherwise provided in the trust contract.

Section 32.- Commonwealth of Puerto Rico and its Subdivisions Are Not Liable

Bonds issued by the Corporation shall not constitute a debt of the Commonwealth of Puerto Rico or any of its political subdivisions, nor shall the Commonwealth of Puerto Rico or any of its political subdivisions be liable therefor, and such bonds shall only be payable from funds that have been encumbered for their payment, unless the Commonwealth or any of its public agencies otherwise participate as guarantors.

Section 33.- Transfer of Property from the Government to the Corporation

The Commonwealth of Puerto Rico, its public agencies, public corporations and political subdivisions, including the municipalities, are

hereby authorized to assign and transfer to the Corporation, at its request and under reasonable terms and conditions, without the need for calling a public bid or other formalities of law in addition to the execution of the corresponding deed, any property or interest over the same (including property that is already dedicated to public use), that the Corporation deems necessary or convenient in order to carry out its purposes.

In accordance to the provisions in this section, the deed to any property of the Commonwealth of Puerto Rico, including the deed to any property that is subsequently acquired, may be transferred to the Corporation by the officer in charge of said property or who has it under its jurisdiction. The Secretary of Transportation and Public Works shall transfer to the Corporation, free of any charge, those additional lands of the Commonwealth of Puerto Rico that, in the judgment of the Governor of Puerto Rico, said Corporation needs in order to achieve its goals and purposes.

These provisions shall not be construed in the sense of authorizing the assignment or transfer of property set aside for other purposes by express legislative provision.

The Secretary of Transportation and Public Works, the Secretary of Housing and the Mayor of San Juan shall submit to the Legislature in March of each year a listing of all the properties assigned and transferred to the Corporation by virtue of the

authorization herein contained and the appraisal of each property.

Section 34.- Transfer of Personnel

The Corporation herein created shall have the condition of excluded for purposes of Act No. 5 of October 14, 1975, as amended, the "Puerto Rico Public Service Personnel Act."

Any Commonwealth officers or employees who are appointed to fill a position in the Corporation shall retain the status and rights they had at the time of joining the service of the Corporation pursuant to the personnel legislation in effect and shall also retain any rights they held in any retirement system or pension fund prescribed by the law for officers and employees that hold similar positions in the Government of the Commonwealth.

Section 35.- Transition Committee

The Secretary of the Department of Transportation and Public Works and the Board of the Corporation shall appoint a Transition Committee responsible for adopting the necessary measures for the transfer to the Corporation of the functions of the Department of Transportation and Public Works and the Highway and Transportation Authority with regard to the ENLACE Project.

This Committee shall supervise the adequate transfer to the Corporation of all matters under the administration and responsibility of the Department

of Transportation and Public Works, without interrupting the administrative processes or the rendering of services and operations of said Department. This Committee shall cease operations when so determined by the Secretary of the Department of Transportation and Public Works and the Board.

Section 36.- Transfers

Not later than sixty (60) days as of the appointment of the members of the Board of Directors, the Corporation shall submit to the Office of Management and Budget an application and a budget draft for the surplus of the current fiscal year at the time this Act takes effect. Once this budget is approved by the Office of Management and Budget and by the Board of Directors, the Department of Transportation and Public Works and the Highway and Transportation Authority shall transfer to the Corporation the programs, funds, obligations, property, equipment, records, files and any others related to the functions for the development of the District.

Not later than ninety (90) days as of the appointment of the members of the Board of Directors, all the powers, functions and obligations conferred by law or regulation onto the Department of Transportation and Public Works and the Highway and Transportation Authority with respect to the development of the District shall be transferred to the Corporation. The transfers provided in this subsection shall be carried out

without being subject to the prohibitions for election years contained within any of the laws in effect.

Section 37.- Injunction

No injunction shall be issued to hinder the application of this Act or any part thereof.

Section 38.- Reports

The Corporation, through the Board of Directors, shall render an annual report on March 31 to the Governor, both Houses of the Legislature and the Mayor of San Juan with an account of the activities carried out by the Corporation during the previous fiscal year, its financial situation and the work plan for the three subsequent fiscal years. Said report shall also be submitted to the communities of the District through the representatives of the G-8.

Section 39.- Appropriations

A recurring annual amount shall be appropriated to the Corporation to carry out the purposes of this Act. Said appropriations shall be contained in the General Expense Budget of the Government.

Section 40.- Incompatibility, Separability and Interpretation

If any provision, word, sentence, subsection or section of this Act were challenged for any reason before the court and ruled unconstitutional or null,

said ruling shall not affect, prejudice or invalidate the remaining provisions of this Act.

Any provision of law or regulation that is incompatible with the provisions of this Act is hereby repealed to the extent that such incompatibility may exist.

The Statement of Motives of this Act is hereby attached thereto and made a part thereof. The provisions of this Act shall be liberally construed with the purpose of furthering the development and implementation of the public policy established in its Statement of Motives and to carry out any other purposes set forth in this Act.

Section 41.- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act *No. 489 (H.B. 4916)* of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to adopt the "Martín Peña Canal Special Planning District Integrated Development Act;" to create the Martín Peña Canal ENLACE Project Corporation and the Office of the Project, as well as a Land Trust; to provide for its existence, administration and financing; to appropriate funds and for other related purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 30th of April of 2007.

Francisco J. Domenech
Director

Appendix E

(H. B. 1403)

(No. 32)

(Approved June 23, 2009)

AN ACT

To amend Section 16 of Act No. 489 of September 24, 2004, known as the "Martín Peña Channel Special Planning District Integrated Development Act," to make it feasible for its provisions to be conformable to other laws, and to clarify that public domain lands shall not be transferrable.

STATEMENT OF MOTIVES

The Martín Peña Channel ENLACE Project Corporation was created through Act No. 489 of September 24, 2004, known as the "Martín Peña Channel Special Planning District Integrated Development Act."

Through the abovementioned Act, the Legislature of Puerto Rico created said Corporation as the body responsible for coordinating and implementing all phases of the Martín Peña Channel ENLACE Project, in areas such as housing, urban development, infrastructure, and socioeconomic development, and all projects related to the dredging and canalization of said body of water, as well as the

development of community initiatives that further social, economic, and cultural development.

For the implementation of the Public Policy set forth in Act No. 489, Section 16 provided that all public agencies that hold lands in the District shall be understood to have transferred the respective title to the Corporation after one hundred sixty (160) days as of the effectiveness of the Act.

It provided further that in the case of public domain or patrimonial lands, the ownership rights thereof shall be vested upon the Corporation.

Public agencies, which term includes all agencies, public corporations, and instrumentalities of the Commonwealth Government and the municipalities, may have their own objectives, purposes, and programs pursuant to the laws, regulations, and programs that apply to them.

Therefore, the amendment of Section 16 is in order so as to conform the provisions of Section 16 of Act No. 489 to other laws of which the purposes are also matters of high public interest.

Furthermore, it is necessary to amend Section 16 to suppress the reference made to public domain properties, since these are not liable to being privately owned. (Sec. 256 of the Civil Code of Puerto Rico.)

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 16 of Act No. 489 of September 24, 2004, is hereby amended to read as follows:

"Section 16.—Transfer of Lands.—

The public agencies, as defined in this Act, that manage, have custody, have dominion over, lease or own lands in the District may transfer the respective title deed to the Corporation, insofar as such transfer does not contravene any legislation, regulations, programs, objectives, fiscal situation, and public policy considerations of the Public Agency in question. In the case of public domain or patrimonial lands, the ownership thereof shall be vested upon the Corporation, insofar as such ownership does not contravene any legislation, regulations, programs or objectives of the Public Agency having custody of said public domain lands, with the exceptions established below with respect to the Maritime-Terrestrial Zone.

Any property the title of which belongs to the Municipality of San Juan shall keep its title unaltered.

In the event that the Corporation or Trust created by virtue of this Act has attempted to register or has registered any Municipal property under its name, such registration shall be hereby revoked and rendered ineffective, and the title shall

be reverted to the Municipality of San Juan immediately.

Any property that is not registered under the name of the Municipality of San Juan, but that is being used, maintained, operated and/or that contains buildings and/or structures of the Municipality of San Juan to render services of any kind such as sports, community, health, educational, and others, of which the title belongs to any instrumentality of the Executive Branch, Departments, Agencies, Corporations or Dependencies, shall transfer such titles to the Municipality of San Juan, provided, that the latter had been using them and that the same shall continue, as expressly directed by the law, to render the same services they presently render to the community and any other service that the Municipality of San Juan decides to render in them. The Municipality shall not dispose of the same without first offering the transfer of the title to the Government instrumentality which originally held the title thereof, except when having received a waiver from said agency to sell.

The properties of the Commonwealth of Puerto Rico shall be assessed and evaluated by the dependencies holding the titles thereof in order to determine whether these shall remain the property of such dependencies or whether, in their judgment and pursuant to the applicable laws and regulations, these shall be transferred by such agency; provided, that such action does not deprive citizens from essential services rendered therein.

Any of these properties that have been transferred to the Corporation or Trust shall be reverted to the Original Agency or title holder to continue with the abovementioned legal process.

Any private or individual title holder who holds the title at the time of the approval of this Act shall retain the same; however, he/she may assign, sell, transfer, or convey the same voluntarily.

Any person who by virtue of this Act may be entitled to receive a title and qualifies therefor, shall be evaluated and granted such title individually for the nominal value of one dollar. For such purposes, the Municipality of San Juan, in coordination with the department, agency, corporation or dependency of the Executive Branch holding the title of such property, shall carry out, at their own expense, any necessary study, evaluation and "as built" plan, so that, once the process is completed and the resident is qualified, the department, agency, corporation or dependency of the Executive Branch holding the title of such property shall execute the deed assigning the title individually to each one of them. The new title holder, by virtue of this process, may not transfer the property for ten (10) years.

In the event that a person who is granted the title of a property resolves to sell or otherwise transfer the same on or before ten (10) years of the execution of such title, such beneficiary shall reimburse the Municipality of San Juan or the Agency assigning such ownership title seventy-five (75) percent of the value of the lot at the time of the

sale or transfer. The following shall be understood to be included in the term sale or transfer: Sale, Exchange, Liens, Mortgage, or Collateral Security. The 75% reimbursement shall be made at the time of the execution of the deed, as appropriate.

The beneficiary may be exempted from compliance with the restrictions set forth above, which shall require a certification by the Secretary of the Department of Housing. Said certification shall attest compliance with any of the following circumstances: 1) divorce, when one of the parties assigns his/her participation in the lot to the other party, who shall acquire the corresponding part of the lot under the same restrictions as the assigning spouse and shall be bound to comply with the same, as stipulated in their divorce, without any monetary compensation or goods in return; 2) inheritance, if the property is acquired by the owner of the probate estate, who bequeaths the same to his/her heirs and legatees, who shall acquire the lot under the same restrictions as the testator and shall be bound to comply with the same; 3) serious or terminal illness, as certified by a physician to such effect, insofar as due to such condition, the owner or his/her dependent living in the same lot, is compelled to sell or transfer the lot to obtain medical treatment; 4) obtain a mortgage loan to make improvements to the property without cash out; 5) these restrictions shall be extended to the legatees of the beneficiary.

In view of the fact that the property registry neither vests nor divests rights, any person who holds a valid title, whether or not such title is

recorded, shall so remain upon the approval of this Act.

Any site or land that by virtue of Act No. 489 has been registered under the Corporation or Trust shall revert to the original ownership status until every study, measures or procedures are conducted pursuant to this Act."

Section 2.- This Act shall take effect immediately after its approval; however, the effects thereof shall be retroactive to September 24, 2004.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 32 (H. B. 1403) of the 1st Session of the 16th Legislature of Puerto Rico:

AN ACT to amend Section 16 of Act No. 489 of September 24, 2004, known as the "Martín Peña Channel Special Planning District Integrated Development Act," to make it feasible for its provisions to be conformable to other laws, and to clarify that public domain lands shall not be transferrable.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 30th of November of 2009.

Solange I. De Lahongrais, Esq.
Director